TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 85

CENTRAL STATES ELECTRIC COMPANY,
PETITIONER,

vs.

CITY OF MUSCATINE, IOWA, AND ELMER E. JOHNSON, FOR HIMSELF AND THE USERS OF NATURAL GAS IN THE CITY OF GREENFIELD, IOWA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 13, 1944.

CERTIORARI GRANTED JUNE 12, 1944.

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INDEX.

	Original	Print
Proceedings in U. S. C. C. A., Seventh Circuit	1	1
Caption	1	1
Order of Federal Power Commission reducing rates, July 23, 1940	2	1
Order on motion for stay of order of July 23, 1940 of Federal Power Commission	8	6
Petition for review of interim rate order of Federal Power Commission entered July 23, 1940	10	7
Statement of points to be relied upon	22	18
Appearances of counsel (omitted in printing)	31	
Order staying order of Federal Power Commission	32	28
Order denying motion to reinstate bond filed in Cause No. 7439 and directing petitioners to file bond without surety in penal sum of $1,000,000	33	29
Bond filed pursuant to stay order	34	29
Order approving bond filed pursuant to stay order	35	31
Bond filed in Cause No. 7439	36	31
Order entered in Cause No. 7439 staying order of Federal Power Commission	37	32
Order entered in Cause No. 7439 staying order of Federal Power Commission	40	35

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 1, 1944.

—1739

Proceedings in U. S. C. C. A., Seventh Circuit—Continued	Original	Print
Order entered in Cause No. 7439 denying motion to reinstate bond in Cause No. 7439 and directing petitioners to file bond without surety in penal sum of $1,000,000	41	36
Opinion by Lindley J.	42	36
Order that counsel present form of judgment for approval	52	46
Statement of United Gas Service Company re its interest in refund	66	53
Statement of Natural Gas Pipeline Company of America re its interest in refund	53	47
Statement of Texoma Natural Gas Company re its interest in refund	53	47
Statement of Federal Power Commission re its interest in refund	53	47
Statement of The Peoples Gas Light and Coke Company et al. re its interest in refund	55	48
Statement of Illinois Commerce Commission re its interest in refund	57	49
Order retaining jurisdiction of refund	61	51
Order appointing Tappan Gregory as agent to supervise refunds	64	52
Order re interest and costs	68	54
Memorandum opinion on interest and costs	71	55
Statement of Central States Electric Company re its interest in refund	73	56
Memorandum opinion re methods of making refunds	77	60
Order designating banks and amounts to be deposited in re refund	84	64
Statement of Iowa-Illinois Electric Company re its interest in refund	86	65
Statement of Iowa-Nebraska Light and Power Company re its interest in refund	87	66
Findings of fact, conclusions of law and decree re distribution of refunds, Sept. 3, 1942	88	67
Order re extension of time to show cause	103	80
Order modifying paragraph (h) of the decree entered September 3, 1942	104	81
Order separating interest of Central States Electric Company in the refund for separate disposal	105	81
Supplemental decree, Dec. 15, 1942	107	82
Order of distribution	130	100
Stipulation of City of Nebraska, et al. re settlement of their claims in the refund	133	102
Order entered pursuant to preceding stipulation	136	104
Motion of Central States Electric Company for leave to intervene	139	105
Petition of Central States Electric Company, intervenor	142	106
Order granting leave to Central States Electric Company to file its petition and to intervene	154	115
Order to give notice re application to intervene by Central States Electric Company	155	115

Proceedings in U. S. C. C. A., Seventh Circuit—Continued	Original	Print
Resistance of City of Muscatine to intervention of Central States Electric Company	157	116
Affidavit of service	165	122
Resistance of Town of Greenfield to intervention of Central States Electric Company	166	122
Affidavit of servce	168	124
Affidavits re proof of publication	169	124
Order of submission on intervention of Central States Electric Company	170	126
Amendment to resistance of City of Muscatine to intervention of Central States Electric Company	171	126
Affidavit of service	175	128
Order denying Central States Electric Company's petition in intervention	176	129
Order directing payment of Central States Electric Company fund to City Treasurers	178	130
Letter from Chapman and Cutler to Clerk declining to consent to payment of Central States Electric Company fund to City Treasurers	180	132
Motion of Central States Electric Company for leave to file supplemental petition	181	133
Supplemental petition of Central States Electric Company	182	134
Resistance of City of Muscatine to motion of Central States Electric Company for leave to file supplemental petition	192	140
Affidavit of service	197	143
Resistance of Elmer Johnson pro se and as Mayor of the City of Greenfield to supplemental petition of Central States Electric Company	199	144
Order granting leave to Central States Electric Company to file its supplemental petition and denial thereof	201	146
Petition of Central States Electric Company to stay execution of orders of February 14, 1944, and March 28, 1944	202	147
Affidavit of service	207	150
Order staying execution of orders of February 14 and March 28, 1944, for 30 days	209	152
Designation of record	210	152
Affidavit of service	216	154
Clerk's certificate (omitted in printing)	218	
Order allowing certiorari	219	156

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents.

Petition for Review of Order of the Federal Power Commission

And, to-wit: On the twenty-third day of July, 1940, an order was entered by the Federal Power Commission, which said order was amended on August eighth, 1940. The said orders of July 28, 1940, and August 8, 1940, are set out as follows in the printed record filed on January 8, 1941, in the Circuit Court of Appeals for the Seventh Circuit:

[fols. 2-3] BEFORE FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper, Basil Manly, John W. Scott, Clyde L. Seavey.

* * (Caption G-109 & G-112) * *

ORDER REDUCING RATES—July 23, 1940

Having considered the complaint of the Illinois Commerce Commission against, the answer thereto by, and the order of this Commission instituting investigation of, the Natural Gas Pipeline Company of America and the Texoma Natural Gas Company, defendants-respondents herein, a motion of counsel for the Illinois Commerce Commission and counsel for this Commission for an immediate interim order reducing rates, the conditional answer and pleas to jurisdiction in reply thereto by defendants-respondents, the other orders previously entered herein, the evidence of record, the oral arguments presented before the Commission sitting en banc and the briefs filed herein, and having

on this date made and entered its Memorandum Opinion [fol. 4] (Opinion No. 49) which is hereby referred to and made a part hereof by reference:

The Commission, for the purpose of disposing only of the joint motion before it for an immediate interim order reducing rates, in the above entitled matters, finds that:

(1) The Natural Gas Pipeline Company of America is a corporation organized and existing under the laws of Delaware; is engaged in the transportation of natural gas in interstate commerce by means of its 24-inch natural gas main transmission pipe line, approximating 900 miles in length, extending from a point in the State of Oklahoma known as Gray's Junction through the States of Kansas, Nebraska, and Iowa, and into the State of Illinois to a point near Joliet; is also engaged in the sale in interstate commerce of natural gas so transported to various purchasers for resale for ultimate public consumption for domestic, commercial, industrial, and other uses; and is a "natural-gas company" within the meaning of the Natural Gas Act;

(2) The major portion, approximating 90%, of the natural gas transported and sold by the Natural Gas Pipeline Company of America is sold to the Chicago District Pipeline Company, for resale for public consumption, delivery being made near Joliet, Illinois;

(3) The Texoma Natural Gas Company is a corporation organized and existing under the laws of Delaware; is engaged in the production and gathering of natural gas in the Texas Panhandle field; is engaged in the transportation of natural gas in interstate commerce by means of its 24-inch natural gas main transmission pipe line, approximating 75 miles in length, extending from its compressor station in the State of Texas near Fritch into the State of Oklahoma to its sales meter and connection, near Gray's Junction, with the system of the Natural Gas Pipeline Company of America; is also engaged in the sale in interstate commerce of gas so transported to the Natural Gas Pipeline Company of America for resale for ultimate public consumption for domestic, commercial, industrial, and other uses; and is a "natural-gas company," within the meaning of the Natural Gas Act;

(4) The major portion, approximately 90% of the natural gas so produced and gathered by the Texoma [fol. 5] Natural Gas Company is transported and sold by it to the Natural Gas Pipeline Company of America at the aforesaid delivery point near Gray's Junction, Oklahoma;

(5) The Illinois Commerce Commission is a "State commission" within the meaning of the Natural Gas Act;

(6) The rates and charges, demanded, observed, charged, and collected by the Natural Gas Pipeline Company of America and the Texoma Natural Gas Company, defendants-respondents herein, for the transportation and the sales of natural gas in interstate commerce, set forth in findings Nos. (1) to (4), inclusive, together with the rules, regulations, practices, and contracts, affecting such rates and charges, are subject to the jurisdiction of this Commission;

(7) The Natural Gas Pipeline Company of America and Texoma Natural Gas Company, defendants-respondents, are under substantially common control and ownership, are but arms of the same organization, being virtual departments of the same, and are in all substantial respects operated as a single enterprise, for the production, gathering, transportation, sale, and delivery of natural gas;

(8) Until further order of this Commission and for the purpose of disposing of the motion before us, a rate base composed of the Companies' estimates may be accepted, as follows:

Reproduction Cost New of Physical Properties (exclusive of gas reserves) as of June 1, 1939	$56,302,250
Value of Gas Reserves as of June 1, 1939	13,334,775
Capital Additions from June 1, 1939, to December 31, 1942	3,808,399
Working Capital	975,000
Rate Base	$74,420,424

(9) The total capital expenditures of the Companies through December 31, 1954, less salvage (including all capital expenditures to date), based upon the Companies' estimates, will be not more than $78,284,009, which is the amount on which provision for amortization should be calculated;

[fol. 6] (10) The period over which the provision for amortization should be calculated is the entire life of the properties, estimated by the Companies to be 23 years, 1932-1954, inclusive;

(11) The annual allowance for amortization should be calculated on a sinking fund basis, with interest credited to the amortization reserve at the rate of 6½% per year, compounded annually;

(12) The required annual allowance for amortization is $1,557,852;

(13) The fair rate of return for the Companies is not more than 6½% per annum;

(14) The annual amount necessary for a fair return to the Companies is not more than $4,837,328, which, with the addition of the annual allowance of $1,557,852 for amortization in (12) above, amounts to a total of $6,395,180, for amortization and a fair return;

(15) The Companies' annual net revenues available for amortization and return, based upon the Companies' estimates, averaged for 1939 to 1942, inclusive, will be $9,511,454, which will be reduced to approximately $9,362,032 as a result of the calculated increase in Federal taxes under the 1940 Revenue Act;

(16) The Companies' annual net revenues (as found in (15) above) available for amortization and return, exceed the amount reasonably necessary as found in (14) above, by $2,966,852;

(17) A reduction in annual net revenues of $2,966,852, together with the consequent reduction in the applicable Federal Income Tax, would permit a reduction in rates (gross operating revenues) of $3,750,090;

(18) The rates and charges made, demanded, or received by defendants-respondents for or in connection

with their transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption are unjust, unreasonable and excessive;

(19) The rates and charges of defendants-respondents after reflecting the reductions hereinafter ordered, will be just and reasonable;

Therefore, the Commission orders that:

(A) The rates and charges made, demanded, or received by defendants-respondents for or in connection [fol. 71] with their transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption shall be reduced to reflect a reduction of not less than $3,750,000 per annum in the operating revenues of Natural Gas Pipeline Company of America;

(B) Defendants-respondents shall file on or before August 15, 1940, new schedules of rates and charges for or in connection with their transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption, which shall reflect the reduction in operating revenues ordered in paragraph (A) above, which new schedules of rates and charges shall be effective as to all bills regularly rendered on or after September 1, 1940;

(C) The Commission reserves the right to reject all or any part of such new schedules and in lieu thereof to prescribe the same by further order;

(D) On and after the effective date of the new schedules of rates and charges filed and made effective in accordance with paragraph (B) above, defendants-respondents shall cease and desist from making, demanding, or receiving any rates and charges which do not reflect the reduction ordered in paragraph (A) above;

(E) The record herein shall remain open for such further proceedings as the Commission may deem necessary or desirable;

(F) The motion by defendants-respondents to dismiss the motion for immediate interim order reducing rates for want of jurisdiction be and the same is denied;

(G) The motion by defendants-respondents to dismiss the motion for immediate interim order reducing rates for want of sufficient evidence of record be and the same is denied;

(H) This order shall not be construed as an acquiescence by this Commission in any estimates or determinations of original cost, or any valuation of property, claimed or asserted by said defendants-respondents.

By the Commission.

Leon M. Fuquay, Secretary.

[fols. 8-9] BEFORE FEDERAL POWER COMMISSION

Commissioners: Leland Olds, Chairman; Claude L. Draper, Basil Manly. John W. Scott and Clyde L. Seavey not participating.

* * (Caption—G-109 and G-112) * *

ORDER GRANTING IN PART AND DENYING IN PART A MOTION FOR A STAY OF THE COMMISSION'S ORDER OF JULY 23, 1940—August 8, 1940

Upon application filed with the Commission on August 8, 1940, by Natural Gas Pipeline Company of America and Texoma Natural Gas Company, praying that the operation of the Commission's order dated July 23, 1940, in the above entitled matter, be stayed and suspended pending the filing of a motion for rehearing and the disposition of such motion and, in the event such motion be denied, pending the review of said order by the courts on appeal;

The Commission orders that:

(A) Paragraph (B) of the Commission's order adopted July 23, 1940, in this proceeding be and it is hereby amended to extend the time of filing of new schedules of rates and charges to on or before September 1, 1940;

(B) The application of Natural Gas Pipeline Company of America and Texoma Natural Gas Company, referred to above, be and it is hereby denied except as provided in paragraph (A) above.

By the Commission.

J. H. Gutride, Acting Secretary.

[fol. 10] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1940

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

PETITION FOR REVIEW OF INTERIM RATE ORDER OF FEDERAL POWER COMMISSION—Filed September 11, 1940

To said Honorable Court:

Natural Gas Pipeline Company of America, a corporation, and Texoma Natural Gas Company, a corporation, hereinafter called petitioners, respectfully show:

I

Each of petitioners is a private corporation organized and existing under and by virtue of the laws of the State of Delaware, and each is located and has its principal place of business at 20 North Wacker Drive, in the City of Chicago, State of Illinois, within the Seventh Circuit.

II

Respondent Federal Power Commission is a Government commission created by an act of Congress, having its principal office and place of business in the City of Washington, District of Columbia.

Respondent Illinois Commerce Commission is a state commission created by an act of the Legislature of Illinois, having its principal office and place of business at Springfield, [fol. 11] Illinois, and also an office in Chicago, Illinois, both Springfield and Chicago being within the Seventh Circuit.

III

Petitioners seek a review of a so-called interim order directing petitioners to file a new schedule of rates and charges to effect a reduction in their operating revenues in the amount of $3,750,000 a year, entered and issued by respondent Federal Power Commission on July 23, 1940,

and amended by supplemental order dated August 8, 1940, under purported authority of the Natural Gas Act (15 U. S. C., Chapter 15B). The jurisdiction of this Court is invoked under Section 19(b) of the Natural Gas Act (15 U. S. C. 717r(b)).

IV

Since about January 1, 1932, petitioners have been, and they are at this time, engaged in the business of producing and purchasing natural gas and in transporting and selling at wholesale such natural gas in interstate commerce. Petitioner Texoma Natural Gas Company owns large reserves of gas in what is commonly known as the Panhandle gas field, in the State of Texas, which reserves underlie a great number of gas leases acquired, consolidated, developed and held by said petitioner. On its leases said petitioner has drilled many wells, from which it produces natural gas into a pipeline gathering system by it constructed, owned and operated, through which it transports such gas to its compressor station near the town of Fritch, in the State of Texas, and thence through its main pipeline to a point near Gray Junction, Oklahoma, where it sells and delivers such natural gas to petitioner Natural Gas Pipeline Company of America. At such point near Gray Junction, Oklahoma, the petitioner last named receives and purchases from petitioner Texoma Natural Gas Company three-fourths of its total market requirements and from Colorado-Interstate Gas Company one-fourth of its total market requirements, and transports such gas in interstate commerce along and through its 24 inch pipeline to Joilet, Illinois, and intermediate points, at which it sells and delivers 98% of such natural gas at wholesale to utilities which in turn resell the [fol. 12] same to the public for domestic, commercial and industrial uses. The remaining 2% of such natural gas the petitioner last named sells directly to industrial users along its pipeline. Petitioners are operated as a single enterprise, and all the profits of the combined operations of petitioners accrue to petitioner Natural Gas Pipeline Company of America, petitioner Texoma Natural Gas Company being operated on a non-profit basis.

V

Following the enactment of the Natural Gas Act, approved June 21, 1938, respondent Illinois Commerce Com-

mission, purporting to act under Section 13 of the Natural Gas Act (15 U. S. C. 717 l), on or about September 23, 1938, filed with respondent Federal Power Commission a complaint alleging that the rates and charges of petitioners for natural gas sold in the State of Illinois were unjust and unreasonable, requesting that an order be entered directing petitioners to appear and show cause why the rates charged by petitioner Natural Gas Pipeline Company of America to utilities in Illinois should not be reduced, and requesting that an order be entered setting fair, just and reasonable rates for natural gas sold by said petitioner in the State of Illinois.

Respondent Federal Power Commission did not issue a rule on petitioners to show cause why their rates and charges for gas sold in the State of Illinois should not be reduced; but on or about October 14, 1938, it entered an order reciting the filing of the above mentioned complaint and instituting an investigation of petitioners to determine with respect to each of them whether their rates and charges in connection with the transportation and sale of natural gas subject to the jurisdiction of the Federal Power Commission were unjust, unreasonable, unduly discriminatory or preferential, and, in the event it should find any such rates and charges to be unjust and unreasonable, to determine and fix, by appropriate order or orders, reasonable and non-discriminatory rates and charges.

On November 16, 1938, petitioners filed an answer to said complaint of respondent Illinois Commerce Commission, in [fol. 13] which they denied that the rates or charges for natural gas sold by petitioner Natural Gas Pipeline Company of America to utilities in the State of Illinois are unjust and unreasonable, and denied also other allegations contained in the complaint. In said answer they denied and challenged any jurisdiction, power or authority of respondent Federal Power Commission to enter any order attempting to change, modify or set aside any charge or price for natural gas sold by petitioners to utilities in the State of Illinois or elsewhere, or to substitute or prescribe any different charges or prices therefor, on the ground that petitioners constitute a single enterprise engaged in the business of owning natural gas reserves, developing same through the drilling and equipping of wells thereon, producing natural gas therefrom, transporting same through their own pipelines and facilities to points in the States of Kan-

sas, Nebraska, Iowa and Illinois, and selling such commodity at wholesale to selected distributors and industrial consumers under private contracts; that petitioners' enterprise is of a strictly private character, not affected with a public interest in the sense that Congress would have jurisdiction, power or authority to enact legislation purporting to authorize respondent Federal Power Commission to regulate the prices and charges for which their commodity is sold. Petitioners also alleged that the Natural Gas Act, in so far as it purports to confer on respondent Federal Power Commission jurisdiction or power to change, modify or set aside the charges or prices at which petitioners sell natural gas at wholesale to distributors or to authorize it to set up and prescribe different charges or prices for such commodity, is invalid, and that any rules, regulations or orders promulgated by respondent Federal Power Commission with a view of attempting to exercise any such purported jurisdiction are null and void and unenforcible as against petitioners because the inevitable operation and effect thereof will be to deprive petitioners of their property and liberty of contract without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 14]

VI

On or about April 14, 1939, respondent Federal Power Commission entered an order consolidating for purposes of hearing the complaint and investigation above mentioned and setting a public hearing in the proceedings, to be held before a trial examiner, commencing on May 8, 1939.

VII

At the opening session of the hearing beginning on May 8, 1939, counsel for respondents called to the stand two witnesses who testified concerning some of the geological, engineering and accounting issues involved. At subsequent sessions of the hearing held from time to time through the summer and fall of 1939, petitioners offered their direct testimony, calling a total of 37 witnesses. Some of these witnesses testified to the facts concerning the history and operation of petitioner's business, the enterprise and pioneering of petitioners in the planning, designing and construction of their pipelines and other facilities, the extraor-

dinarily high stresses and pressures under which petitioners' facilities have been and are operated, the unusually high annual load factor developed and maintained by petitioners in the operation of their business, the extent of their reserves, the geological and engineering conditions under which they produce and will produce their gas through the future life of the field, the effect of the pressures and other geological conditions in the field on the productive capacity of the wells, and the additional capital outlays which petitioners must incur in the drilling and equipping of wells and in the building of field gathering lines, field compressor stations, and other facilities during the future life of the field.

Other witnesses testified to past capital outlays and replacement costs, ultimate salvage values, maintenance and operating expenses, and other necessary and proper expenses incurred and to be incurred in connection with the operation of petitioners' business, and to the sales and earnings by petitioners since the beginning of their operations and the probable sales and earnings by petitioners in their [fol. 15] operations in the future. Experts testified concerning the cost of reproducing new at the present time the depreciable physical facilities now used by petitioners, the state of depreciation of the existing depreciable facilities, the net figures showing the reproduction cost new less observed depreciation, and the present fair value of petitioners' gas reserves in their depleted condition.

Experts testified to the going concern value of petitioners' properties, to the actual cost of acquiring such going concern value, and to the cost of reproducing it at the present time.

Several witnesses testified to various mechanical risks and hazards inherent in the natural gas business and to those special hazards confronting petitioners by reason of the operation of their facilities under the extremely high pressures and tensions and the topography of the country traversed by petitioners' lines. Other risks and hazards confronting generally those engaged in the natural gas business, and petitioners in particular, were pointed out in the testimony.

Other witnesses testified to the proper method of handling a sinking fund looking to its ultimate return with interest to petitioners at the time their reserves shall be exhausted, and pointed out the types of securities available for such

investment and the yields which could be obtained through the investment of funds in such securities.

Petitioners caused an exhibit to be prepared and offered in evidence, summarizing the figures showing the total amount invested and to be invested, the total charges for maintenance, operations and other costs, including taxes incurred and to be incurred, the revenues received and to be received over the entire life of the project, beginning on January 1, 1932, and ending with the year 1954, the latest year through which petitioners will have gas available from their reserves under the most favorable circumstances, from which it appeared that over the whole period petitioners will have earned an amount which, after returning to them their total investment and all operating costs and expenses, will yield them a return on their average invest- [fol. 16] ment of only 6.39% per annum. This exhibit was offered as showing that, over the whole period covered by the limited life of petitioners' business, petitioners' prices and charges for natural gas are not unjust and unreasonable.

Petitioners offered another exhibit, summarizing the figures showing the reproduction cost new less observed depreciation of the physical properties other than gas reserves, the present fair value of the gas reserves, the going concern value of petitioners' properties, the cost of future additional capital assets and of capital replacements, the ultimate salvage value of the properties, the necessary working capital, the expense of maintaining and operating petitioners' facilities and conducting their business in the past and in the future, the past and prospective revenues, and other pertinent figures, from which it appeared that petitioners probably will earn over the future life of their reserves, after a proper allowance for the amortization of the present value of their properties, a return on the proper rate base of 4% per annum.

Petitioners offered another exhibit showing substantially the same figures as the exhibit last described except that, as pointing to the present fair value of petitioners' properties, they showed the original cost of the present properties instead of the reproduction cost new less observed depreciation of the properties other than gas reserves and the present fair value of the gas reserves. The figures used as a basis of this exhibit show that, after setting aside an amount each year sufficient to return the present value of the

properties by the time petitioners' reserves of gas are exhausted, petitioners will receive an annual return on the proper rate base of 5.1% per annum.

These exhibits, in so far as they deal with the future, were based on figures developed through the testimony of experts who testified concerning the necessary expenditures and the probable revenues during the future life of petitioners' reserves. The figures dealing with going concern value were those developed by the witnesses who testified on that subject. The annual allowance for amortization was calculated on a sinking fund formula, using the compound [fol. 17] interest rate to which the witnesses testified as the return which petitioners could reasonably expect from the investment of their sinking fund allowances in the highest types of securities.

Four expert witnesses were called by petitioners to testify on the subject of rate of return. These witnesses, after testifying at great length and after producing and introducing a large number of statistical tabulations, graphs and charts, and after testifying at length concerning the risks involved in petitioners' business and the reaction of the investing public to such risks as shown by the figures, charts and graphs contained in the exhibits produced by the witnesses, arrived at the opinion that a minimum of 8% per annum would be a fair and reasonable return to petitioners on the fair value of their property. Two of these witnesses testified that 8% would not be an adequate return and expressed their judgment that a higher rate of return would be required.

VIII

On October 6, 1939, petitioners announced that they had concluded their direct testimony. Thereafter counsel for respondents, after cross examining seven of petitioners' witnesses, including the four experts who had testified on rate of return, called to the stand four witnesses, two of whom were employees of respondent Federal Power Commission and the other two employees of respondent Illinois Commerce Commission, who testified to statistics and produced statistical exhibits dealing with interest rates, cost of financing through issuance of securities, and other matters ordinarily offered in connection with rate of return studies. Two of these witnesses confined their testimony to statistical facts without undertaking to appraise or analyze their testi-

mony and apply it to the subject of rate of return. Another testified to his conclusion as to the cost of refinancing petitioners' properties. The fourth witness, an employee of respondent Illinois Commerce Commission, testified to a conclusion that 6% per annum on the present fair value of petitioners' properties would be a reasonable return. These four witnesses were later cross examined by petitioners at a session of the hearing concluded on December 14, 1939, at [fol. 18] which session petitioners also offered some testimony on redirect examination of two of their witnesses on rate of return. Subsequently, at a session of the hearing held on January 8, 9 and 10, 1940, petitioners offered redirect testimony by two of their witnesses on rate of return and some testimony in rebuttal of the testimony offered by respondents on that subject.

IX

On November 7, 1939, at the conclusion of the direct examination by counsel for respondents of their four witnesses who testified on the subject of rate of return, but prior to the cross examination of such witnesses by petitioners and prior to the offering of any redirect or rebuttal testimony by petitioners on the subject of rate of return, counsel for respondents filed with the Examiner as a part of the record a motion for an immediate interim order by respondent Federal Power Commission setting up rates and charges that would operate to reduce the revenues of petitioners by a sum of $3,000,000 to $3,500,000 annually. At the time such motion was offered, counsel for respondents announced that they were not resting their case. In the motion counsel for respondents stated that the cross examination of petitioners' witnesses, the introduction of respondents' evidence, the taking of petitioners' rebuttal evidence and cross examination thereon will consume much additional time, so that the closing of the case will be delayed for a long time in the future.

X

Pursuant to the direction of respondent Federal Power Commission, said motion for interim order was set for argument before respondent Federal Power Commission as a whole on December 18, 1939, on which date petitioners appeared and filed pleas to the jurisdiction of respondent Federal Power Commission to enter an interim order, and

also a conditional answer in reply to said motion for interim order. Respondent Federal Power Commission denied a request by petitioners that they be permitted to present their pleas to the jurisdiction before the hearing on the motion and that they be allowed to open and close the argu- [fol. 19] ment on such pleas. In that connection counsel for petitioners pointed out to said respondent that they had had no opportunity to prepare themselves for argument on the merits of the motion, due to the circumstance that they had been continuously engaged in preparing and offering their testimony before the Examiner from the time said motion was filed. Counsel for respondents presented their arguments in support of the motion for interim order and petitioners were heard in reply on their pleas to the jurisdiction. On the same date petitioners filed their brief in support of their pleas to the jurisdiction.

Later counsel for respondents filed their briefs in support of the motion and petitioners filed their brief in reply.

No further proceedings were had in the hearing subsequent to January 10, 1940, until July 23, 1940, on which date respondent Federal Power Commission issued a written opinion and an interim order, which it caused to be served on petitioners on August 1, 1940, the effect of which was to direct petitioners, prior to August 15, 1940, to file new schedules of rates and charges for gas sold at wholesale which would operate to reduce petitioners' net revenues available for amortization and return by the sum of at least $3,750,000 per annum, which new rates and charges should be effective as to all bills regularly rendered on or after September 1, 1940. Prior to the issuance of such opinion and order petitioners had no notice of the contents or effect thereof, no report of the Examiner to respondent Federal Power Commission on the issues of law or of fact ever having been submitted to petitioners.

XI

On August 8, 1940, petitioners filed with respondent Federal Power Commission their verified motion for a stay of the order of said respondent dated July 23, 1940, pending the filing of petitioners' motion for rehearing and the action of said respondent thereon. On the same date said respondent entered an order denying said petition in all things

except that the time for the filing of new schedules of rates and charges was extended to on or before September 1, 1940.

[fol. 20]

XII

On August 19, 1940, petitioners filed with respondent Federal Power Commission their application for rehearing, in which they set forth specifically the grounds upon which said application was based.

XIII

On the 6th day of September, 1940, said respondent entered an order denying petitioners' application for rehearing, which order was served on petitioners on September 9, 1940.

XIV

Pursuant to Section 19(b) of the Natural Gas Act (15 U. S. C. 717r(b)), petitioners present their petition for a review of said order of respondent Federal Power Commission issued July 23, 1940, as modified by the order of said respondent dated August 8, 1940, together with a statement of the points upon which petitioners rely as grounds for a decree of this Court reversing, setting aside and annulling said order of respondent Federal Power Commission. All the points submitted herewith as grounds for reversing, setting aside and annulling said order were urged before respondent Federal Power Commission in the application for rehearing submitted by petitioners to said respondent as aforesaid. Reference is here made to the statement of points attached hereto, which is made a part of this petition.

XV

For the reasons expressly set forth in the statement of points attached hereto, said order of respondent Federal Power Commission, as modified, is erroneous and operates, and will continue to operate, to confiscate petitioners' property, property rights and revenues and to take petitioners' property, property rights and revenues without due process of law, in violation of the due process clause of the Fifth Amendment to the Constitution of the United States; and, for the reasons set forth in said statement of points, said order, as modified, should be reversed, set aside and held for naught.

[fol. 21] Wherefore petitioners pray:

(a) That a copy of this petition forthwith be served upon some member of respondent Federal Power Commission in pursuance of Section 19(b) of the Natural Gas Act (15 U. S. C. 717r(b)), and upon respondent Illinois Commerce Commission;

(b) That respondent Federal Power Commission be required, in conformity with the Natural Gas Act, to certify and file with the Court a transcript of the record upon which the order complained of in this petition was entered, including the testimony, evidence and exhibits admitted, pleadings, opinion, findings, conclusions, and orders of said respondent in the proceedings above referred to;

(c) That this Honorable Court review the proceedings, including the testimony, evidence and exhibits admitted, pleadings, opinion, findings, conclusions and orders in the proceedings out of which the said order of July 23, 1940, issued;

(d) That said order of July 23, 1940, in so far as it purports to direct that the rates and charges made, demanded or received by petitioners for or in connection with their transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption shall be reduced to reflect a reduction of not less than $3,750,000 per annum in the operating revenues of petitioner Natural Gas Pipeline Company of America, and in so far as it, as modified, directs that petitioners shall file on or before September 1, 1940, new schedules of rates and charges which shall reflect such reduction in operating revenues, be reversed, set aside and held for naught;

(e) That this Honorable Court exercise its jurisdiction over the parties and subject matter of this petition and grant to petitioners such other and further relief in the premises as the rights and equities of the cause may show to be necessary and proper.

[fol. 21a] Natural Gas Pipeline Company of America and Takoma Natural Gas Company, Petitioners, By J. J. Hedrick, 20 North Wacker Drive, Chicago, Ill., George I. Haight, 209 South LaSalle St., Chicago, Ill., S. A. L. Morgan, 20 North Wacker Drive, Chicago, Ill., Attorneys for Petitioners.

Haight, Goldstein & Hobbs, 209 South LaSalle St., Chicago, Ill., Morgan, Culton, Morgan & Britain, Amarillo, Texas, Of Counsel.

Duly sworn to by Floyd C. Brown. Jurat omitted in printing.

[fol. 22] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

October Term, 1940.

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

STATEMENT OF POINTS—Filed September 11, 1940

To Said Honorable Court:

Pursuant to Paragraph 3 of Rule 36 of this Court, petitioners, Natural Gas Pipeline Company of America and Texoma Natural Gas Company, in connection with their petition for review of an order of respondent Federal Power Commission dated July 23, 1940, as modified by an order dated August 8, 1940, file the following statement of points on which they rely as grounds for reversing and setting aside said order. These points, numbered consecutively from 1 to 37, inclusive, were all urged in the same order as objections or assignments of error before respondent Federal Power Commission in petitioners' application for rehearing filed with said respondent on August 19, 1940.

Respondent Federal Power Commission will be referred to hereafter as the Commission; and respondent Illinois Commerce Commission will be referred to as complainant.

[fol. 23] Point 1

The Commission erred in holding that it has authority under the Natural Gas Act to change, modify or set

aside the charges and prices at which petitioners are selling natural gas in interstate commerce at wholesale, it appearing from the record without contradiction that petitioners, constituting a single enterprise, are engaged in the business of owning natural gas reserves in the State of Texas, developing such reserves through the drilling and equipping of wells thereon, producing natural gas therefrom in quantities equal to three-fourths of their total market requirements, purchasing gas from others in quantities equal to one-fourth of their market requirements, transporting the gas so produced and purchased through their own pipelines and facilities to points in the States of Kansas, Nebraska, Iowa and Illinois, and selling such commodity at wholesale to selected distributors and industrial consumers under private contracts; that their business is of a strictly private character, not affected with a public interest in the sense that Congress would have jurisdiction, power or authority to enact legislation purporting to authorize the Commission to regulate the charges or prices for which such commodity is sold; and that the necessary operation of any order purporting to reduce, change or modify such charges would deprive petitioners of their property and liberty of contract without due process of law, in violation of the Fifth Amendment to the Constitution of the United States. (Commission's memorandum opinion No. 49, p. 9; Commission's order reducing rates, finding No. 6, p. 3.)

Point 2

The Commission erred in overruling petitioners' second plea to the jurisdiction of the Commission dated December 18, 1939, and in holding that it has jurisdiction under the Natural Gas Act to reduce the prices at which petitioners are selling natural gas, by interim order or otherwise, pending the final termination of the proceedings and hearing now pending before the Commission and its Examiner, and pending a finding by the Commission, after the conclusion of the hearing and after petitioners have had an opportunity to be heard on their briefs and arguments on the facts presented by the whole record and the law applicable thereto, that the rates and prices charged and collected

by petitioners are unjust, unreasonable, unduly discriminatory or preferential. (Commission's memorandum opinion No. 49, pp. 10-13.)

Point 3

The Commission erred in holding that under the Natural Gas Act it has power and jurisdiction to enter an interim order pending the final termination of the hearing now pending and an opportunity by petitioners to be heard by brief and oral argument on the law and the facts presented by the whole record, since no such power or jurisdiction is conferred upon the Commission by the Natural Gas Act, either in express terms or by necessary implication. (Commission's memorandum opinion No. 49, pp. 10-13.)

[fol. 24]

Point 4

The Commission erred in holding that in these proceedings petitioners have had a *hearing* within the meaning of Section 5(a) of the Natural Gas Act (15 U. S. C., 717d(a)), which provides that "whenever the Commission, after a hearing * * * shall find that any rate, charge, * * * is unjust, unreasonable, * * * the Commission shall determine the just and reasonable rate, charge, * * * and shall fix the same by order." (Commission's memorandum opinion No. 49, pp. 10-13.)

Point 5

The Commission erred in denying the request of petitioners that the issues of fact and of law raised by the motion on which the Commission's order of July 23, 1940, is based and by the briefs in support thereof be referred to the Examiner for a very careful analysis and consideration after receiving briefs and oral argument from counsel for the interested parties, and that the Commission have the formal recommendations of the Examiner on the issues, both of fact and of law, and the exceptions of petitioners thereto, if any, before the Commission should consider the entering of an interim order reducing petitioners' revenues.

Point 6

The Commission erred in not holding that the burden of proof rests upon complainant and counsel for the Commission to establish that petitioners' existing charges are unjust and unreasonable, and that such burden has not been discharged.

Point 7

The Commission erred in not holding that when and if complainant and counsel for the Commission discharged their burden of showing that petitioners' rates and charges are unjust and unreasonable, the burden was then upon complainant and counsel for the Commission to show what rates and charges would be just and reasonable, and that such second burden has not been discharged.

Point 8

The Commission erred in finding that the rates and charges presently charged by petitioners are unjust, unreasonable, unlawful and violative of the provisions of the Natural Gas Act. (Commission's memorandum opinion No. 49, p. 26; Commission's order reducing rates, finding No. 18, p. 4.)

Point 9

The Commission erred in establishing the following rate base:

[fol. 25] Reproduction cost new of physical properties (exclusive of gas reserves as of June 1, 1939)	$56,302,250
Value of gas reserves as of June 1, 1939	13,334,775
Capital additions from June 1, 1939, to December 31, 1942	3,808,399
Working capital	975,000
Rate base	$74,420,424

(Commission's memorandum opinion No. 49, p. 19; Commission's order reducing rates, finding No. 8, p. 3.)

Point 10

The Commission erred in not allowing as the proper rate base the items and amounts set out in petitioners' reply brief dated February 15, 1940, p. 251, as follows:

Reproduction cost new exclusive of gas reserves	$56,302,250
Less "viewed" depreciation	2,866,758
Present value of physical properties exclusive of gas reserves	$53,435,492
Present value of gas reserves	13,334,775
Allowance for future capital expenditures	6,046,286
Going concern value	8,500,000
Working capital	975,000
Rate base	$82,291,553

Point 11

The Commission erred in not holding that the proper rate base is the present value of the property, which, under the uncontradicted evidence, is made up of the reproduction cost new less viewed or actual depreciation of the depreciable properties, the value of the gas reserves, the going concern value, the working capital, and a proper allowance for future capital expenditures aggregating $82,291,553. (Defendants' reply brief dated February 15, 1940, p. 251.)

Point 12

The Commission erred in attempting to apply its own theory as to undepreciated rate base by placing on the gas reserves the present value of those reserves in their depleted condition. (Defendants' reply brief dated February 15, 1940, pp. 144-161.)

[fol. 26]

Point 13

The Commission erred in making no allowance for going concern value in fixing the rate base and in fixing the amount to be amortized. (Commission's memorandum opinion No. 43, p. 19.)

Point 14

The Commission erred in holding that the sum of $8,500,000 claimed by petitioners as going concern value is an arbitrary claim not supported by substantial evidence, it appearing from the uncontradicted evidence that said sum of money represents the aggregate of expenditures actually made and costs actually sustained in developing the market outlets for petitioners' gas up to the normal capacity of the lines; that such expenditures and costs were reasonable; and that at least that amount would have to be expended in attaching business if petitioners were now at the beginning of their operations. (Commission's memorandum opinion No. 49, p. 19.)

Point 15

The Commission erred in reducing the amount allowed for future capital expenditures from $6,046,286, as claimed by petitioners, to $3,808,399, thus eliminating from the amount allowed all future capital expenditures after December 1, 1942, it appearing from the uncontradicted evidence that the amounts claimed by petitioners for capital expenditures after the date last mentioned certainly and definitely will be made and that the property acquired through such expenditures will be devoted to petitioners' business. (Commission's memorandum opinion No. 49, pp. 17, 18 and 19; Commission's order reducing rates, finding No. 8, p. 3.)

Point 16

The Commission erred in holding that the total investment, by which it manifestly means original cost, in contradistinction to fair value, less the salvage value at the end of petitioners' business, should be amortized. (Commission's memorandum opinion No. 49, pp. 20 and 21.)

Point 17

The Commission erred in holding that the proper amount to be amortized is $78,284,009. (Commission's memorandum opinion No. 49, p. 21; Commission's order reducing rates, finding No. 9, p. 3.)

Point 18

The Commission erred in not holding that the proper amount to be amortized is $84,341,218, representing the present fair value of petitioners' present properties, including going concern value and working capital, plus future expenditures for additional capital assets, less the liquidating salvage value at the end of the project's life. (Commission's memorandum opinion No. 49, pp. 20-22.)

[fol. 27]

Point 19

The Commission erred in holding that the proper amortization period should be the total estimated life of the business, namely, 23 years from the beginning of 1932 to the end of 1954. (Commission's memorandum opinion No. 49, pp. 20-21; Commission's order reducing rates, finding No. 10, p. 3.)

Point 20

The Commission erred in not holding that the proper amortization period should be the period intervening from the present time to the end of the project's life, which, under the uncontradicted evidence, will be sometime prior to December 31, 1954. (Commission's memorandum opinion No. 49, p. 20.)

Point 21

The Commission erred in holding that the annual allowance for amortization should be calculated on a sinking fund basis, with interest credited to the amortization reserve at the rate of 6½% per annum, compounded annually. (Commission's memorandum opinion No. 49, pp. 21-22; Commission's order reducing rates, finding No. 11, p. 3.)

Point 22

The Commission erred in not holding, under the uncontradicted evidence, that the annual allowance for amortization should be calculated on a straight line basis, or in any event on a sinking fund basis with interest credited to the amortization reserve at the rate of 2% per annum, compounded semi-annually.

(Commission's memorandum opinion No. 49, pp. 21-22.)

Point 23

The Commission erred in holding that it is fair and equitable, in computing the amortization to be charged as an operating expense under the sinking fund formula, to use an interest rate of 6½%, the allowed rate of return. (Commission's memorandum opinion No. 49, pp. 21-22.)

Point 24

The Commission erred in not holding that in computing the annual reserve for amortization an interest rate of not more than 2% per annum, compounded semi-annually, should be used. (Commission's memorandum opinion No. 49, pp. 21-22.)

Point 25

The Commission erred in holding that as an annual reserve for amortization the sum of only $1,557,852 should be allowed. (Commission's memorandum opinion No. 49, pp. 22 and 26; Commission's order reducing rates, finding No. 12, p. 3, and finding No. 14, p. 4.)

[fol. 28]

Point 26

The Commission erred in not holding that the proper annual allowance for amortization is at least $5,100,732.

Point 27

The Commission erred in eliminating from the allowance for operating expenses the items representing replacements of capital assets subsequent to August 1, 1940, in an amount averaging $188,054 per annum. The estimated cost of these items is included in the $78,284,009 erroneously allowed by the Commission as the proper amount for amortization. However, in estimating petitioners' average income available for amortization and return for the period from August 1, 1940, to and including December 31, 1942, the Commission disregarded the estimated cost of replacements during that period. Petitioners point out that the Commission failed to include such costs among the operating expenses, thus under its own theory arriving at an amount

$188,054 greater than the correct amount available for amortization and return under such theory.

Point 28

The Commissioner erred as a matter of law in finding that 6½% per annum on the rate base allowed is a fair rate of return for petitioners, there being no substantial evidence to support the finding. The allowed rate of return purports to cover only the cost of capital, based on the testimony of an employee of the Commission whose conclusion on that point is not supported by his own factual premise. No allowance is made for efficiency and skill in design and engineering, through which petitioners are able to operate their facilities under extraordinarily high stresses and to transport gas at extraordinarily high pressures, and efficiency in management in attaining and maintaining an average load factor more than 30% higher than that ordinarily attained by other pipelines, which efficiency and skill account for at least $1,200,000 of petitioners' annual revenues, according to the uncontradicted testimony. (Commission's memorandum opinion No. 49, pp. 23-26; Commission's order reducing rates, finding No. 13, p. 3.)

Point 29

The Commission erred in not finding that the fair rate of return for petitioners is not less than 8%.

Point 30

The Commission erred in holding that the annual amount necessary for a fair return to petitioners is not more than $4,837,328 and that the proper allowance for amortization is $1,557,852, or a total of $6,395,180 for fair return and amortization. (Commission's memorandum opinion No. 49, p. 26; Commission's order reducing rates, finding No. 14, p. 4.)

[fol. 29] Point 31

The Commission erred in finding that petitioners' annual net revenues available for amortization and return exceed the amount reasonably necessary by $2,966,852. (Commission's memorandum opinion No.

49, p. 26; Commission's order reducing rates, finding No. 16, p. 4.)

Point 32

The Commission erred in ordering that the rates and charges made, demanded or received by petitioners in connection with their transportation and sale of natural gas shall be reduced to reflect a reduction of not less than $3,750,000 per annum in the operating revenues of Natural Gas Pipeline Company of America. (Commission's memorandum opinion No. 49, p. 26; Commission's order reducing rates, paragraph (A), p. 4.)

Point 33

The Commission erred in finding that the rates and charges after reflecting the reductions ordered will be just and reasonable. (Commission's order reducing rates, finding No. 19, p. 4.)

Point 34

The Commission erred in ordering that petitioners file new schedules of rates and charges to reflect a reduction of not les than $3,750,000 per annum in the operating revenues of Natural Gas Pipeline Company of America effective as to all bills regularly rendered on or after September 1, 1940. (Commission's order reducing rates, paragraph (B), p. 4; Commission's order dated August 8, 1940, paragraph (A).)

Point 35

The Commission erred in ordering that from and after the effective date of the new schedules ordered to be filed petitioners shall cease and desist from making, demanding or receiving any rates and charges which do not reflect the reduction ordered in Paragraph (A) of the Commission's order reducing rates. (Commission's order reducing rates, Paragraph (D), p. 5.)

Point 36

The Commission erred in denying petitioners' application for a stay of the Commission's order dated July 23, 1940, pending the filing of an application for rehearing and the disposition of such application, and, in the

event such application be denied, pending the review of said order by the courts on appeal. (Defendants-respondents' motion for stay filed August 8, 1940; Commission's order denying in part the motion for stay, dated August 8, 1940, Paragraph (b).)

Point 37

The Commission erred in denying petitioners' application for rehearing. (Commission's order dated September 6, 1940.)

[fol. 30] Respectfully submitted, Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners, by J. J. Hedrick, 20 North Wacker Drive, Chicago, Ill., George I. Haight, 209 South LaSalle St., Chicago, Ill., S. A. L. Morgan, 20 North Wacker Drive, Chicago, Ill., Attorneys for Petitioners.

Haight, Goldstein & Hobbs, 209 South LaSalle St., Chicago, Ill.; Morgan, Culton, Morgan & Britain, Amarillo, Texas, of Counsel.

[File endorsement omitted.]

[fol. 31] Appearances of counsel omitted in printing.

[fol. 32] In United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Order Staying Order of Commission—November 1, 1940

The Federal Power Commission having overruled petitioners' petition for a rehearing of this cause; and petitioners, within sixty days of that ruling, having filed a written petition in this Court praying that the order of the Commission be modified or set aside in whole or in part,—it is therefore ordered by this Court that the order of the Commission herein be stayed until the further order of this

Court, under Section 19 of the Natural Gas Act, 15 U. S. C. 717r(c).

It is further ordered that the temporary restraining, or stay, order, pending petitioners' application for rehearing before the Federal Power Commission, issued August 30, 1940, be and the same is hereby dissolved.

[fol. 33] In United States Circuit Court of Appeals

No. 7439-7454

Natural Gas Pipeline Company of America, et al.

vs.

Federal Power Commission, et al.

Order Denying Motion to Reinstate Bond, etc.—November 26, 1940

It is ordered that the motion of counsel for respondent Illinois Commerce Commission that the order entered by this Court on November 1, 1940, injunction case No. 7439, be modified by requiring that the petitioners' bond in the penal sum of $1,000,000 be reinstated and that the amounts in excess of said bond be deposited with the Clerk of this Court to await the final disposition of this cause, be, and the same is hereby, denied.

It is further ordered, as a condition to the stay of the Commission's order heretofore granted, in re petitioners' petition to review the order of the Commission No. 7454, that petitioners forthwith file their bond, without surety, in the penal sum of $1,000,000, conditioned in all respects the same as in the former bond in No. 7439.

[fol. 34] In the United States Circuit Court of Appeals

7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Bond for Stay Order—Filed December 3, 1940

Natural Gas Pipeline Company of America, a corporation, and Texoma Natural Gas Company, a corporation,

acting herein by and through Floyd C. Brown, Vice President and General Manager of each, thereunto duly authorized, acknowledged themselves firmly bound to the Federal Power Commission and the Illinois Commerce Commission in the Penal sum of One Million Dollars ($1,000,000).

The condition of this obigation is such that if the undersigned shall pay or cause to be paid to the purchasers at wholesale of natural gas from Natural Gas Pipeline Company of America, as their seceral interests appear, the amounts representing the reduction in the gross revenues of Natural Gas Pipeline Company of America which shall have accrued pending judicial review of the order of the Fegleral Power Commission dated July 23, 1940, directing the undersigned Natural Gas Company of America to file new schedules of rates and chaeges to reflect a reduction of not less than $3,750,000 per annum in the operating revenues of said Natural Gas Pipeline Company of America together with all costs which may be adjudged against them, should said order last mentioned be sustained, then this obligation shall become null and void and of no further force and effect.

[fol. 35] Witness Natural Gas Pipeline Company of America and Texoma Natural Gas Company this 28th day of November, 1940.

Natural Gas Pipeline Company of America, (Signed) by Floyd C. Brown, Vice President and General Manager.

(Signed) C. F. Campbell. (Seal.)

Texoma Natural Gas Company, (Signed) by Floyd C. Brown, Vice President and General Manager.

(Signed) C. F. Campbell. (Seal.)

Approved 12-3-40.

(Signed) William M. Sparks, Circuit Judge.

In United States Circuit Court of Appeals

7454

Natural Gas Pipeline Company of America, et al., Petitioners,

vs.

Federal Power Commission, et al., Respondents

Order Approving Bond—December 3, 1940

It is ordered that the Bond of petitioners filed this day in this cause, pursuant to the order entered by this Court on November 26, 1940, be, and it is hereby approved.

In the United States Circuit Court of Appeals

No. 7439

[Title omitted]

[fol. 36] Bond for Stay Order—Filed August 30, 1940

Natural Gas Pipeline Company of America, a corporation, and Texoma Natural Gas Company, a corporation, acting herein by and through Floyd C. Brown, their Vice President and General Manager, thereunto duly authorized, acknowledged themselves firmly bound to the Federal Power Commission and the Illinois Commerce Commission in the sum of One Million Dollars ($1,000,000).

The condition of this obligation is such that if the undersigned shall pay or cause to be paid to the purchasers at wholesale of natural gas from Natural Gas Pipeline Company of America, as their several interests appear, the amounts representing the reduction in the gross revenues of Natural Gas Pipeline Company of America which shall have accrued pending judicial review of the order of the Federal Power Commission dated July 23, 1940, directing the undersigned Natural Gas Pipeline Company of America to file new schedules of rates and charges to reflect a reduction of not less than $3,750,000 per annum in the operating revenues of said Natural Gas Pipeline Company of America, together with all costs which may be adjudged against

them, should said order last mentioned be sustained, then this obligation shall become null and void and of no further force and effect.

Witness Natural Gas Pipeline Company of America and Texoma Natural Gas Company this 30th day of August, 1940.

Natural Gas Pipeline Company of America, (Signed) by Floyd C. Brown, Vice President and General Manager.

(Signed) C. F. Campbell, Secretary. (Seal.)

Texoma Natural Gas Company, (Signed) by Floyd C. Brown, Vice President and General Manager.

(Signed) C. F. Campbell, Secretary. (Seal.)

Approved August 30, 1940.

William M. Sparks, Circuit Judge.

[fol. 37] In United States Circuit Court of Appeals

7439

Illinois Commerce Commission, Complainant,

vs.

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Defendants,

In the Matter of Natural Gas Pipeline Company of America and Texoma Natural Gas Company

Stay Order—August 30, 1940

On August 29, 1940, came on to be heard in chambers before me, one of the Judges of this Court, the Clerk of the Court being in attendance, the petition of Natural Gas Pipeline Company of America, a corporation, and Texoma Natural Gas Company, a Corporation, for a temporary restraining order pending notice and a hearing on their verified petition for stay of an order issued by the Federal Power Commission on July 23, 1940. In the course of hearing on said petition, John E. Cassidy, Attorney General of Illinois, by Harry R. Booth, Assistant Attorney General, made his Appearance on behalf of Illinois Commerce Com-

mission. In the course of further proceedings on the petition, George Slaff, of counsel for Federal Power Commission, by Long Distance telephone from Washington, D. C., requested that the hearing be not concluded until the following day so that he might come to Chicago and be heard on the petition. Accordingly, at the conslusion of the arguments of counsel for petitioners and for the Illinois Commerce Commission, the hearing was recessed until August 30, 1940, at 9:30 A. M.: and upon a reconvening of the hearing at the time last mentioned, the said George [fol. 38] Slaff appeared on behalf of respondent Federal Power Commission and presented his arguments in opposition to the petition. When the arguments were about concluded, the Judge announced what his order would be, and thereupon the said George Slaff, of counsel for Federal Power Commission, for the first time announced that he had intended to appear specially, only for the purpose of questioning the jurisdiction of a Judge of the Court sitting in chambers to grant the stay order prayed for. Having considered said petition and the supporting memorandum brief and the arguments of counsel, it is

Ordered: that respondents, Federal Power Commission and Leland Olds, Claude L. Draper, Clyde L. Seavey, John W. Scott and Basil Manly, the persons constituting the Federal Power Commission, and their successors in office, and the Illinois Commerse Commission and William W. Hart, Robert Harper, James Marnane and Charles Byrne, the persons constituting the Illinois Commerce Commission, and their successors in office, and the agents and attorneys of said Federal Power Commission and of said Illinois Commerce Commission, be and they are enjoined and restrained, until further order of this Court from enforcing, causing to be enforced, or attempting to enforce the rate order issued against petitioners by the Federal Power Commission on July 23, 1940, as amended by order entered by said Commission on August 8, 1940, in proceedings before the Federal Power Commission, Docket Nos. G-109 and G-112, a copy of each of which orders is filed with said petition for stay as Exhibits H. and J., respectively, to the supporting memorandum brief; and

That said respondents, their successors in office, agents and attorneys, be and they are hereby enjoined and restrained, until further order of this Court, from taking

any steps or instituting any proceedings, or causing any steps to be taken or any proceedings to be instituted, against petitioners, their officers, agents or employees, to enforce any penalties, fines or other remedy for disregarding said rate order entered July 23, 1940, as amended: and [fol. 39] That this order will become effective upon the execution and delivery to the Clerk of this Court by petitioners of their joint and several bond in the penal sum of $1,000,000, conditioned on their refunding to those who purchase natural gas from petitioners at wholesale, as their several interests appear, the amount represented by the reduction in revenues as directed by the Federal Power Commission in its order dated July 23, 1940, if the order last mentioned be sustained: and

That a copy of this order be served on the Federal Power Commission, on George Slaff, of counsel for the Federal Power Commission, on the Illinois Commerce Commission, and on Harvey R. Booth, Assistant Attorney General, for John E. Cassidy, Attorney General of Illinois, Attorney for Illinois Commerce Commission.

Dated at Chicago, Illinois, August 30, 1940.

(Signed) William M. Sparks, Circuit Judge.

* * * * * * *

[fol. 40] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 7439

NATURAL GAS PIPELINE COMPANY OF AMERICA, and TEXOMA NATURAL GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION, and ILLINOIS POWER COMMISSION, Respondents

Petition to Stay Order of Commissioner Pending Petitioners' Application for Rehearing Before the Federal Power Commission

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA, and TEXOMA NATURAL GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION, Respondent

Petition to Set Aside or Modify Order of Federal Power Commission

ORDER STAYING ORDER OF COMMISSION—November 1, 1940

The Federal Power Commission having overruled petitioners' petition for a rehearing of this cause; and petitioners, within sixty days of that ruling, having filed a written petition in this court praying that the order of the Commission be modified or set aside in whole or in part,—it is therefore ordered by this court that the order of the Commissioner herein be stayed until the further order of this court, under section 19 of the Natural Gas Act, 15 U. S. C. 717r(c).

It is further ordered that the temporary restraining, or stay, order, pending petitioners' application for rehearing before the Federal Power Commission, issued August 30, 1940, in cause No. 7439, be and the same is hereby dissolved.

(Signed) William M. Sparks, J. Earl Major, Walter E. Treanor, United States Circuit Judges.

Nov. 1, 1940.

[fol. 41] In United States Circuit Court of Appeals

No. 7439-7454

Natural Gas Pipeline Company of America, et al.,

vs.

Federal Power Commission, et al.

Order Denying Motion to Reinstate Bond etc.—November 26, 1940

It is ordered that the motion of counsel for respondent Illinois Commerce Commission that the order entered by this Court on November 1, 1940, injunction case No. 7439, be modified by requiring that the petitioners' bond in the penal sum of $1,000,000 be reinstated and that the amounts in excess of said bond be deposited with the Clerk of this Court to await the final disposition of this cause, be, and the same is hereby, denied.

It is further ordered, as a condition to the stay of the Commission's order heretofore granted, in re petitioners' petition to review the order of the Commission No. 7454, that petitioners forthwith file their bond, without surety, in the penal sum of $1,000,000, conditioned in all respects the same as in the former bond in No. 7439.

[fol. 42] In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1941, April Session, 1942

No. 7454

Natural Gas Pipeline Company of America, and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Before Evans and Sparks, Circuit Judges, and Lindley, District Judge

Opinion—Filed May 22, 1942

Lindley, District Judge:

The original petitioners seek further exercise of the jurisdiction of this court in determination and distribution of the

amounts payable by them, pursuant to and by virtue of the terms of the stay order entered and the bonds filed in the original proceeding and in restraint of suits in other forums.

On August 30, 1940, this court restrained temporarily, enforcement of the Federal Power Commission's rate order of July 23, 1940, upon condition that petitioners file a bond in the sum of $1,000,000, conditioned as provided in the order. In November following, the court, under Section 19 (c) of the Natural Gas Act, entered an order staying the rate, dissolving the earlier temporary restraining order, and requiring, as a condition of the stay, a bond for $1,000,000, in favor of the Federal Power Commission and the Illinois Commerce Commission conditioned for payment of the amounts representing the reduction in gross revenues of petitioners which might accrue pending review of the [fol. 43] order of the Commission directing petitioners to file new schedules of rates and changes effectuating reduction of not less than $3,750,000 per annum in the operating revenue of petitioners. At that time petitioners represented to the court that they were amply solvent and could and would respond to any final judgment against them.

This court, upon final hearing, set aside the order of the Commission, 120 F. (2d) 625. Subsequently the Supreme Court reversed that judgment, — U. S. —. Since then, petitioners have filed with the Commission new rate schedules in conformity with the latter's original order which, by virtue of the decision of the Supreme Court, became effective as of the date of its entry. Petitioners have filed also copies of the schedules disclosing the amounts representing the reduction in rates which would have been made to their customers had the stay not been entered and had the scheduled rates been effective from the date of original order of the Commission July 23, 1940.

In their present petition, petitioners set forth the foregoing facts and aver that they are ready, able and willing to refund such amounts as we may deem properly payable as a result of the erroneous entry of the stay. They aver that this court has "exclusive jurisdiction, authority and obligation to regulate, control and direct the disposition of any funds payable because of the order staying the order of the Power Commission"; that, notwithstanding such sole jurisdiction, they have been sued both in the state and federal courts by ultimate consumers of the gas distributed and that unless we retain jurisdiction, they will be sub-

jected to numerous similar suits. They pray that the court reserve jurisdiction to determine all amounts payable by them under the terms of the bonds filed or as a result of the stay order, to the persons entitled to receive such payments, and the amount due each and that all persons claiming any right to such payments be enjoined from asserting their demands in any court other than this.

The Illinois Commerce Commission in its answer avers that the gas distributed passed eventually to ultimate consumers, approximately one million in number; that the rates charged by the distributing companies to their customers are fixed by the Illinois Commerce Commission largely upon and necessarily reflect the prices paid by the distributing companies to petitioners or their affiliate, the Chicago District Pipe Line Company; that the money represented by [fol. 44] the excess charges was collected from the consumers and, eventually and inevitably, is equitably due them; that this court has exclusive original jurisdiction of the determination of legality of the Federal Commission's order and the consequent exclusive ancillary jurisdiction of distribution of all such money as has accrued because of the stay in favor of the persons altimately and equitably entitled thereto, and that all persons claiming any interest in such funds should be permitted and directed to come into the ancillary proceedings. It prays that the court retain jurisdiction for the purpose of making distribution, grant leave to the respondent to file proper pleading and restrain prosecution of all other actions.

The distributing companies, who purchase gas from petitioners and the latters' affiliate and who sell gas to the public agree that the refund should eventually, equitably and ultimately be made to the consumers who purchased from them. They contend that this court had exclusive jurisdiction of the original proceedings and has equally exclusive jurisdiction of the necessary ancillary proceedings to control, provide for and direct distribution of the refunds. Indeed the positions of petitioners, the Federal Power Commission, the Illinois Commerce Commission and the distributing companies are in substantial accord.

Marshall Joyce and others, claiming to be consumers, file a pleading which we shall designate as a cross-petition. They neither admit nor deny the jurisdiction of this court but aver that our authority, if any, is of such character that we are under no compulsion to exercise it and that

whether we should do so should be determined by our sound discretion "on the basis of the balance of convenience to both the court and parties and the comparative adequacy of remedy and relief available both on trial and on appeal." They have filed in the District Court a class suit in behalf of themselves and all other customers seeking recovery of excess charges, determination of the respective amounts due customers, distribution thereof, and restraint against all parties from proceeding in other courts. They have filed a similar action in the state court. They aver in each of their complaints that the excess charges constitute "a trust fund for the use and benefit of the gas consumers" and "money had and received to the use of the consumers" and insist that said sums shall be paid only to such persons.

Thus all parties before the court agree that the excess [fol. 45] charges when distributed should in equity be refunded to the ultimate consumers. The question immediately confronting us is whether this court has jurisdiction and if so whether we should or must retain it and restrain other litigation or, whether our power to act is discretionary and the parties should be remanded to relief in other forums.

The source and boundaries of our authority must be found in the Natural Gas Act, 15 U. S. C. A. Sec. 717R (b) (c), providing that persons aggrieved by an order of the Commission may obtain a review in the proper Circuit Court of Appeals, which shall have exclusive jurisdiction to affirm, modify or set aside the order in whole or in part, and the judgment of which shall be final, subject only to review by the Supreme Court. Proceeding for review does not, unless so specifically ordered by the court, operate as a stay of the Commission's order. Thus the Circuit Court of Appeals is the first forum in which a judicial hearing can be had to determine the legality of the order. In this respect the legislation is similar in its terms and purport to that governing orders of the Federal Trade Commission, the National Labor Relations Board and various other administrative bodies. We have previously said in *Century Metalcraft Corporation* v. *Federal Trade Commission*, 112 F. (2d) 443 (C. C. A. 7) that under the Federal Trade Commission Act, Congress has made a grant of original jurisdiction to the court to enforce, set aside or modify the Commission's order and that such power carries with it authority to vacate or modify our own judgment

whenever good cause is shown. This is in accord with announcements of other jurisdictions. We think it well settled that in respect to review of orders of Federal Boards and Commissions, the jurisdiction of the Circuit Court of Appeals, when granted by Congress, is original rather than appellate in character and that, being endowed with original jurisdiction, the court may by its own orders protect the rights of the parties in any manner in which any trial court of equity of general jurisdiction might do so in an injunction suit. *Butterick Co.* v. *Federal Trade Commission*, 4 F. (2d) 910 (C. C. A. 2); *Silver Co.* v. *Federal Trade Commission*, 292 Fed. 752 (C. C. A. 6); *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673 (C. C. A. 8); *Federal Trade Commission* v. *Balme*, 23 F. (2d) 615 (C. C. A. 2), certiorari denied 277 U. S. 598; *Indiana Quartered Oak Co.* v. *Federal Trade Commission*, 58 F. (2d) 182 (C. C. A. 2).

[fol. 46] We are accustomed to thinking of the District Court as the only federal judicial tribunal of original jurisdiction, but we know of no constitutional prohibition against a grant by the Congress of original jurisdiction to the Circuit Court of Appeals. We are not concerned with the reason why Congress has in some instances vested in the District Court original jurisdiction to review orders of administrative bodies and why in others it has lodged such power in the Court of Appeals. The essential fact is that it has seen fit so to do. The rank of the court is not important. *Fed. Trade Comm.* v. *Balme*, 23 F. (2d) 615 (C. C. A. 2).

Having original jurisdiction, what is the nature of and the true limitation upon that jurisdiction? Is its exercise discretionary upon the part of this court or are we confronted with a duty? In considering this, we should remember the distinction between ancillary or incidental jurisdiction and that which is original. Where a court has jurisdiction of a cause of action and the parties, it has jurisdiction also of supplemental proceedings which are a continuation of or incidental to and ancillary to the former suit even though the court as a federal court might not have had jurisdiction of the parties involved in the ancillary proceeding if it were an original action. In other words, inasmuch as such jurisdiction is ancillary, a federal court is not precluded from exercising it over persons not

parties to the judgment sought to be enforced. 25 C. J. 696 and 697; 21 C. J. S., Sec. 88, page 136.

In *Labetter County Commissioners* v. *Moulton*, 112 U. S. 217 the court had entered judgment against a township upon bonds issued by the county commissioners in behalf of the township. Subsequently plaintiff sought a writ of mandamus to compel the commissioners to assess and collect a tax to satisfy the judgment. It was contended that the court, if it should act upon such a petition, would be exercising original jurisdiction and, under the particular facts, without jurisdiction. But the Supreme Court declined to accept this reasoning, saying: "It is quite true, as is familiar, that there is no original jurisdiction in the Circuit Courts in mandamus, and that the writ issues out of them only in aid of a jurisdiction previously acquired, and is justified in such cases as the present as the only means of executing their judgments. But it does not follow, because the jurisdiction in mandamus is ancillary merely, that it can not be exercised over persons not parties [fol. 47] to the judgment sought to be enforced. An illustration to the contrary is found in that class of cases of which *Krippendorf* v. *Hyde*, 110 U. S. 276, is an example."

Where in the progress of a suit in the United States Court, property has been drawn into custody and control, third persons claiming interest in or liens upon the property may be permitted to come into court to protect and enforce their claims, even though the court could not have considered or adjudicated their claims if it had not originally impounded the property. *Hoffman* v. *McClelland*, 264 U. S. 552. There the court said at page 558: "Power to deal with such claims is incident to the jurisdiction acquired in the suit wherein the impounding occurs, and may be invoked by a petition to intervene *pro interesse suo* or by a dependent bill. But in either case the proceeding is purely ancillary. *Oklahoma* v. *Texas*, 258 U. S. 574, 581; *Minnesota Co.* v. *St. Paul Co.*, 2 Wall. 609, 632; *Krippendorf* v. *Hyde*, 110 U. S. 276, 281; *Compton* v. *Jesup*, 68 Fed. 263, 279; *Sioux City Co.* v. *Trust Co.*, 82 Fed. 124, 128; *Minot* v. *Mastin*, 95 Fed. 734, 739; Street Fed. Eq. Pr. pp. 1229, 1245-1247, 1364."—

In a later case, *Central Union Trust Company* v. *Anderson County*, 268 U. S. 93, the Supreme Court said: "Ancillary suits are not limited to those initiated by persons

who desire to come in and have their rights determined. Such a suit may be maintained by the plaintiff in the principal suit against strangers to the record to determine a controversy having relation to the property in the custody of the court and which, in justice to the parties before the court, ought to be determined in the principal suit." Similar expressions are found in *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273; *Blair* v. *City of Chicago*, 201 U. S. 400; *Wabash Railroad* v. *Adelbert College*, 208 U. S. 38.

This ancillary power to do complete justice as to all the parties' interests in a fund grows out of equity jurisdiction. When invoked we can conceive of no method by which it properly may be evaded. Thus the Supreme Court, discussing the jurisdiction of a statutory district court of three judges which had enjoined an order of the Interstate Commerce Commission, referring to the duty of the court to protect the impounded fund and direct its disposition, in *Inland Steel Co.* v. *U. S.*, 306 U. S. 153, said: "It is the duty of a court of equity granting injunctive relief to do so upon conditions that will protect all, including the pub-[fol. 48] lic, whose interests the injunction may affect. * * * When the court finally determined that the administrative findings and order were correct, appellant could claim an interest in the fund only by asserting a right to payments forbidden by law, and it became the duty of the court promptly to allocate the fund to its lawful owner." Similarly where the court had suspended the action of the Secretary of Agriculture and a fund had accumulated, in *U. S.* v. *Morgan*, 307 U. S. 183, the court said: "The district court sits as a court of equity, see *Ford Motor Co.* v. *National Labor Relations Board*, 305 U. S. 364, 373; *Inland Steel Co.* v. *United States*, 306 U. S. 153; and in exerting its extraordinary powers to stay execution of a rate order, and in directing payment into court of so much of the rate as has been found administratively to be excessive, it assumes the duty of making disposition of the fund in conformity to equitable principles."

Here the fund has accumulated. Those charged with the duty of accounting for it, are ready and willing and offer to deposit it with the court. The fact that it is not yet physically in court does not alter the situation or affect the jurisdiction of the court, for this fund came into existence as a result of this court's stay order entered in the original proceeding. Two bonds were required to be filed,

conditioned for the payment of the money, a requirement made to protect the interests of all those whom our injunction affected. To all intents and purposes this involves the same jurisdiction as that over disposition of a fund actually in court; the jurisdiction of the court and its obligation and duty to act are the same. So in *Ex parte Lincoln Gas & Electric Co.*, 256 U. S. 512, a bond had been filed. The city and its officials were representatives of the consumers who were the parties eventually concerned and the bond was conditioned for payment of the excess rate, in case it should be established that the enjoined rate was proper. The court, discussing the bond and the duty of the court with reference thereto, said: "And it recognized that to ascertain what should be due to them, to see to its collection from the company in case of its failure to make good its attack upon the ordinance, and to cause distribution to be made among the several claimants, was essential to the doing of complete equity, and therefore a natural incident to the jurisdiction of the court in the main cause. To retain jurisdiction for the purpose of requiring that [fol. 49] restitution be made according to the terms of the bond was and is a necessary part of the duty of the District Court under the mandate. * * * The contention that the jurisdiction fails because the consumers were not parties to the record nor in privity with the parties, and the company prayed no relief against them, is transparently unsound. The ordinance was intended to limit the gas rate for the benefit of the consumers; suit was brought against the municipality and its officers as the public representatives of the interests of the consumers; the restraining order and temporary injunction were intended for the very purpose of enabling the company to exact, pending the suit, rates in excess of those limited by the ordinance; the equitable duty to refund excess charges if the suit should fail was a duty owing to the consumers; and the form of the supersedeas bond recognized all this, and was particularly designed for their protection." See also *Arkadelphia Milling Co.* v. *St. Louis Southwestern Ry. Co.*, 249 U. S. 134; *In re City of Louisville*, 231 U. S. 639.

In *Ford Motor Company v. National Labor Relations Board*, 305 U. S. 364, the Supreme Court said: "The jurisdiction to review the orders of the Labor Relations Board is vested in a court with equity powers, and while the court must act within the bounds of the statute and with-

out intruding upon the administrative province, it may adjust its relief to the exigencies of the case in accordance with the equitable principles governing judicial action. The purpose of the judicial review is consonant with that of the administrative proceedings itself,—to secure a just result with a minimum of technical requirements."

Thus we find the Supreme Court defining the court's obligation in cases similar to this as the duty of a court of equity to exercise jurisdiction to enforce restitution, and so far as possible, to correct what has been wrongfully done. *B. & O. R. R. Co.* v. *U. S. et al.*, 279 U. S. 781. More than one maxim of equity is applicable. Equity abhors circuity and multiplicity of actions. A court of equity taking jurisdiction for one purpose, will do complete equity between all interested persons. Such an obligation, imposed upon us as a court of original jurisdiction, can not, we think, with propriety, be avoided. Nor can we evade action by recourse to the suggestion that it is without our discretion to decline to act. The performance of duty is not discretionary; it is obligatory, mandatory.

Section 22 of the Natural Gas Act, 15 U. S. C. A. Sec. [fol. 50] 717 (u) affords, it seems to us, the only basis of argument, which causes us to pause. By this Section, the District Court is given "exclusive jurisdiction of violations of this chapter or the rule, regulations, and orders thereunder. * * *" It is also given jurisdiction of suits or actions to enforce any liability or duty "created by, or to enjoin any violation of this chapter or any rule, regulation, * * *."

The query arises, did Congress, by this section, vest the District Court with jurisdiction to direct the refund of rates which the Commission, or this court, on appeal, has declared to be excessive.

We have two sections conferring jurisdiction upon the Federal court, included in the Act. The one, just referred to, gives certain jurisdiction to the District Court. It is general and quite inclusive; it does not deal specifically with the return of excessive rates.

Another section deals specifically with the subject of rates and charges. It makes the Commission the rate determining, rate regulating body. That body is given express power to determine what is a just and reasonable rate, and to fix the same by order. The gas company, however, is given authority to appeal from the Commission's holding

to the United States Circuit Court of Appeals, which is given *exclusive* jurisdiction to affirm, modify, or set aside, the order, in whole, or in part. Provision is made for a hearing before that court, and it is provided that if the finding of the Commission be supported by substantial evidence, it shall be conclusive.

In other words, we find here provision for separate, exclusive jurisdictions of the District Court and of the Circuit Courts of Appeals. In each instance, it should be noted that the jurisdiction conferred is exclusive. The scope of the exclusive jurisdiction of the Circuit Court of Appeals is specific and covers appeals, which includes rate cases.

The rule of construction, *generalia specialibus non derogant* at once suggests itself. If the Circuit Court of Appeals has exclusive jurisdiction in the rate case and has power to affirm, modify, or reverse, the conclusion seems unavoidable that it necessarily also has not only the power, but the duty, to make interim staying orders, etc., require bonds, and perform the necessary acts to effectuate the orders made as a part of its jurisdiction.

We have, in the exercise of our conferred power, caused [fol. 51] a fund to accumulate, and as a court of equity, are charged with the duty of doing complete justice. We find nothing in the Act indicating an intent upon the part of Congress to relieve us of the responsibility it has seen fit to impose upon us.

It follows that responsibility for proper disposition of all excess charges is, under the original jurisdiction of this court and its ancillary powers as a court of equity, mandatory upon us; it is placed upon us and upon us alone. We deem it our duty to retain jurisdiction and, as a court of equity, to determine to whom and in what amounts the distribution shall be made. It follows that all parties should be restrained from proceeding in other courts.

Since the conference in which the court and the interested parties participated and at which the Illinois Commerce Commission presented, through the Attorney-General of Illinois, its formal appearance and brief in support of our exclusive jurisdiction to act in the premises, we have received from the Commission, by its Chairman, a letter suggesting that authority to superintend and complete restitution is lodged in the Commission. However, in view of the absence of express provision of the Illinois Statutes to such effect and of machinery in the Commission to accom-

plish such refunding, and in further view of our conclusions as to the nature of our jurisdiction, we are not persuaded that the suggestion is legally correct or that it is of such practical effect as to justify us in shifting our duty and responsibility to the Commission.

All questions as to intervention shall be reserved for further action by this court. Likewise all other questions arising out of the petitioners' request of this court that it retain jurisdiction are reserved for further study and order. We are at this time meeting and determining the question of our jurisdiction upon the affirmative determination of which our future action is dependent. Counsel for petitioners will present an order enjoining all parties from proceeding in any other jurisdiction.

* * * * * * *

[fol. 52] IN UNITED STATES CIRCUIT COURT OF APPEALS

* * * * * * *

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA, et al.

vs.

FEDERAL POWER COMMISSION

ORDER THAT COUNSEL PRESENT FORM OF JUDGMENT—May 22, 1942

Pursuant to the opinion of this Court filed this day, It is ordered by the Court that counsel for petitioners present to the Court for approval a form of order enjoining all parties from proceeding in any other jurisdiction in this matter.

* * * * * * *

[fol. 53] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 7454

NATURAL GAS COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners

vs.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

STATEMENT OF NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY RE: ITS INTEREST IN REFUND—Filed June 18, 1942

Pursuant to request by the Court, of which I am advised by letter from the Honorable Kenneth J. Carrick dated May 26, 1942, I disavow and disclaim any interest in and to the moneys which Natural Gas Pipeline Company of America and Texoma Natural Gas Company must refund as directed by the order of the Federal Power Commission.

(S.) S. A. L. Morgan, Attorney for Petitioners, Natural Gas Pipeline Company of America and Texoma Natural Gas Company.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

STATEMENT OF THE FEDERAL POWER COMMISSION RE: ITS INTEREST IN REFUND—Filed June 18, 1942

Federal Power Commission

Washington

Natural Gas Pipeline Company of America, et al. vs. Federal Power Commission, et al., C. C. A. 7—No. 7454.

June 4, 1942.

[fol. 54] Honorable Kenneth J. Carrick, Clerk, United States Circuit Court of Appeals for the Seventh Circuit, 1212 Lake Shore Drive, Chicago, Illinois.

Dear Sir:

This will acknowledge receipt of a document in the above entitled matter, dated May 26, 1942, the text of which reads as follows:

"I have been requested by the court to ask you to sign a document disavowing or disclaiming any interest in or to the moneys which the Natural Gas Pipeline Company and Texoma Natural Gas Company must refund, as directed by the order of the Federal Power Commission."

Please be advised that this Commission does not have any financial interest in or to the moneys referred to, but is, of course, interested in the ultimate disposition of such funds.

Very truly yours, (S.) Leon M. Fuquay, Secretary.

[File endorsement omitted.]

[fol. 55] In the United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Statement of Chicago District Pipeline Company, The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois, Western United Gas and Electric Company and Illinois Northern Utilities Company, Setting Forth Their Position with Respect to the Fund Under the Jurisdiction of the Court—Filed June 18, 1942.

Under the circumstances of this case, it is the position of the undersigned companies, as stated by them in open court on May 6, 1942, that they do not now claim and never have claimed any part of the fund; that at all times it has

been and is now their position that the fund belongs to and is the property of the ultimate gas consumers who during the period covered by the accumulation of the fund have paid their bills at the rates then in effect; that these companies are in accord with the position taken by the Federal Power Commission and the Illinois Commerce Commission, respectively, to the effect that the fund belongs and should be distributed to the ultimate consumers and [fol. 55a] not to these companies; that this formal statement of position is filed in order that the Court can proceed in an orderly and expeditious manner with the distribution of the fund; that these companies are ready and willing at all times to assist the Court in working out such orderly and expeditious procedure; and that this statement of position is made knowing that the Court, in the exercise of its equitable powers, is able to and will protect these companies against loss or liability of any nature or character by reason of the existence or disposition of the fund.

Chicago District Pipeline Company, The Peoples Gas Light and Coke Company. By Daily Dines White & Fiedler Sidley, McPherson, Austin & Burgess, Their attorneys. Public Service Company of Northern Illinois, Illinois Northern Utilities Company. By Isham, Lincoln & Beale, Their attorneys. Western United Gas and Electric Company, By Alschuler, Putnam, Johnson & Ruddy, Its attorneys.

June 2, 1942.

[fol. 56] [File endorsement omitted]

[fol. 57] IN UNITED STATES CIRCUIT COURT OF APPEALS

STATEMENT OF ILLINOIS COMMERCE COMMISSION RE: ITS INTEREST IN REFUND—Filed June 18, 1942

[fol. 58] June 1, 1942.

No. 7454

In re Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

v.

Federal Power Commission and Illinois Commerce Commission, Respondents

Judge Evan A. Evans, Judge William M. Sparks, Judge Otto Kerner, Circuit Court of Appeals, 1212 North Lake Shore Drive, Chicago, Illinois.

Dear Judge:

Pursuant to your communication dated May 26, 1942, concerning the matter of disavowing or disclaiming interest in or to the moneys which the petitioners must refund, the members of the Illinois Commerce Commission state their considered judgment as follows:

As a statutory branch of the State Government, the Commission find themselves unable to disavow or disclaim any interest in or to the moneys involved. The members of this Commission as such have no interest in or to said moneys. However, this Commission must take cognizance of the fact that in the distribution of refunds of the Illinois Bell Telephone Company upon completion of the distribution to the patrons of the said company, a substantial sum of money remained of which distribution could not be made due to inability to locate the proper parties. In that case the State of Illinois was reimbursed out of the money so remaining for the expenses incurred by the Illinois Commerce Commission in the prosecution of the litigation which es-
[fols. 59-60] lished the fund. We are, therefore, of the opinion that should there be moneys available for distribution, the rightful recipients of which cannot be found, then the State of Illinois should be reimbursed for expenditures incurred in the investigation and litigation preliminary to the establishment of the fund now available for distribution.

Yours very truly, Illinois Commerce Commission,
John D. Biggs, Chairman.

[File endorsement omitted.]

[fol. 61] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

ORDER RETAINING JURISDICTION OF REFUNDS PAYABLE AND ENJOINING PROCEEDINGS ELSEWHERE—June 24, 1942

On this 24th day of June, 1942, upon petition of Natural Gas Pipeline Company of America and Texoma Natural Gas Company for order retaining jurisdiction to direct the disposition of the funds payable because of the stay order, and upon petition of Marshall Joyce, et al. filed in connection therewith, and upon the answer of Illinois Commerce Commission thereto; the court having on May 6, 1942, conducted a conference at which said original petitioners, Federal Power Commission, Illinois Commerce Commission, Marshall Joyce, et al., Chicago District Pipeline Company, The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois, Illinois Northern Utilities Company and Western United Gas and Electric Company ap-
[fols. 62-63] peared by their attorneys; and the court having considered memorandum filed on behalf of all said persons, other than Federal Power Commission; and the court having filed herein on May 22, 1942, its opinion finding that it has sole and exclusive jurisdiction over the disposition of the excess charges collected by Natural Gas Pipeline Company of America and Texoma Natural Gas Company commencing September 1, 1940 and ending March 31, 1942, during which period the order of the Federal Power Commission dated July 23, 1940, was stayed by this court;

Ordered, Adjudged and Decreed:

First. This court has and reserves sole and exclusive jurisdiction over the disposition of the funds represented by the said excess charges collected by Natural Gas Pipeline Company of America and Texoma Natural Gas Company, and over all obligations of the said companies in respect thereto.

Second. Marshall Joyce and all co-plaintiffs named in their cross-petition filed herein, and all other persons, firms or corporations, be and they hereby are enjoined from instituting, maintaining or prosecuting any suit, action or proceeding in any other court or jurisdiction, against Natural Gas Pipeline Company of America, Texoma Natural Gas Company, Chicago District Pipeline Company, The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois, Illinois Northern Utilities Company, Western United Gas & Electric Company, or any of them, or against any other persons, firms or corporations similarly situated with respect to the subject matter of this proceeding, to recover from any of them all or any part of the funds representing the said excess charges.

(Sgd.) Evan A. Evans, William M. Sparks, Otto Kerner, United States Circuit Judges.

[fols. 64-65] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

ORDER APPOINTING AGENT TO SUPERVISE FUNDS—June 24, 1942

This court having retained jurisdiction of this cause, upon remand by the United States Supreme Court, for the purpose of distribution of the refund found to be due,

It Is Hereby Ordered, That Attorney Tappan Gregory, be, and he is hereby, named, as the court's appointee and agent to effect and supervise the distribution of said refund.

(Sgd.) Evan A. Evans, William M. Sparks, Otto Kerner.

June 24, 1942.

[fols. 66-67] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

STATEMENT RE INTEREST IN REFUND—Filed June 25, 1942

Comes now United Gas Service Company, a corporation, and for the sole purpose of stating its position as regards the fund that shall be paid into court by the petitioners by way of refund, and state as follows:

United Gas Service Company disclaims any part of said fund and asserts that same belongs to and is the property of the ultimate gas consumers who, during the period covered by the accumulation of the fund, have paid their bills at the rates then in effect.

This statement is made to the end that said fund, so far as United Gas Service Company is concerned, may be distributed under such orders as may be promulgated by the court in the exercise of its equitable powers.

It is understood that United Gas Service Company will be subject to no liability or expense in effecting any such distribution.

Dated this 13th day of June, 1942.

United Gas Service Company, by (Name illegible), President. Rowland, Talbott & Rowland, Attorneys, by L. A. Rowland.

[File endorsement omitted.]

[fol. 68] In the United States Circuit Court of Appeals

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

v.

Federal Power Commission and Illinois Commerce Commission, Respondents

Order Re: Interest and Costs—June 26, 1942

The petition of Natural Gas Pipeline Company et al., coming on to be heard, and upon all the proceedings had in this court in the above-entitled cause,

It is ordered that the said Natural Gas Pipeline Company of America and Texoma Natural Gas Company pay to the Clerk of this Court the sums due under the order of the Federal Power Commission, heretofore made and approved by the Supreme Court of the United States, on the sixteenth day of March, 1942, together with interest at 2% per annum. All sums collected by the petitioners in excess of the amounts which, under the order of the Federal Power Commission, they should have charged, shall draw interest at 2% from the date such amounts were improperly collected from the utilities.

[fols. 69-70] It is further ordered that said sums should be paid within ten days of the date hereof and if not paid at that time all said sums shall draw interest at 5%.

It is further ordered that, in making payments and computing the interest, said petitioners shall submit to Tappan S. Gregory, the officer of this court who shall approve the final calculation.

It is further ordered that this order shall in no way exclude the court from proceeding in any other manner to enforce payment from petitioners to the parties entitled thereto.

It is further ordered that the petitioners are not chargeable with and need not pay any expense for distributing said refund among the parties ultimately found to be entitled thereto.

It is further ordered that upon the payment of this sum, liability under the bond heretofore given, as well

as any other liability arising out of the overcharges made by petitioners to the public utilities with whom they contracted, are satisfied and discharged.

Evan A. Evans, Otto Kerner.

June 26, 1942.

[fol. 71] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

MEMORANDUM ON INTEREST AND COSTS—Filed June 26, 1942

Before EVANS and KERNER, Circuit Judges.

The court has had under consideration the distribution of the funds which the petitioners must pay pursuant to the order of the Federal Power Commission, approved by the Supreme Court on the sixteenth of March, 1942. Among other questions there are two which relate to, or bear upon, the amount which petitioners should pay. The principal sum is not in question but there is a dispute over the requirement of interest upon the sums due from the petitioner as well as the expenses incident to distributing the refund among consumers or other parties, which the court may find are entitled to receive said refund.

Our guide is the case of United States v. Morgan, 307 U. S. 183. We have jurisdiction of the fund, and are compelled to see to its distribution. In ascertaining what the order should be, as well as the costs of distributing this amount, we are directed by this case to apply equitable principles and to produce and accomplish results which are fair and equitable.

[fol. 72] In reaching the conclusion as to interest, we are impressed by the argument that the Commission ordered the petitioners to reduce the charges they were making to the utilities by the sum of $3,750,000 per annum. Peti-

tioners failed to comply with that order but wished to review it in the courts. They failed to get a modification or change in said order in the courts, although their proceedings were admittedly in good faith and not for the sake of delay or for the use of moneys which they were collecting under the old rates. It is our opinion that under the circumstances they must be chargeable with interest from the dates they received the moneys and upon the amounts they received in excess of the order made by the Power Commission.

Guided by the requirement that our action should reflect justice and equity, we think a fair rate of interest under the circumstances, considering the times, is 2%.

Under the facts in this case, we are unable to say that the petitioners should be charged with the expenses of the distribution. They did not deal with the consumers, although the gas they sold was known by them to be for the consumers who would ultimately pay the bill for it. The public utility was merely a conduit whereby the natural gas, mixed with other gas, was to be delivered to the consumers, who were to pay a price therefor, fixed by the utilities, after approval by the Illinois Commerce Commission. Under all the circumstances we do not believe that it would be equitable or just to require the petitioners to pay any of the expenses incident to the distribution of said fund.

[fol. 73] IN UNITED STATES CIRCUIT COURT OF APPEALS

STATEMENT OF CENTRAL STATES ELECTRIC COMPANY RE: ITS INTEREST IN REFUND—Filed June 30, 1942

June 29, 1942.

Mr. Kenneth J. Carrick, Clerk, United States Circuit Court of Appeals, 1212 Lake Shore Drive, Chicago, Illinois.

DEAR SIR:

This letter is being written in response to your inquiry dated June 11 pertaining to the fund in the possession of the Court in connection with the Natural Gas Pipeline Company of America matter. The refund of $25,325.46 mentioned in your communication arises under the original contract between Natural Gas Pipeline Company of America and Cen-

tral States Electric Company. More than 80% of the gas received under that contract is taken by the Iowa Electric Company at the Pipeline Company's contract rates for distribution in the city of Muscatine, Iowa, and the Iowa Electric Company pays the Pipeline Company directly for such gas. The balance of the gas is used by Central States Electric Company for local residential and commercial distribution in three small Iowa towns which have no industrial gas consumption.

At the time Iowa Electric Company purchased the gas manufacturing plant and distribution system in Muscatine in 1928, manufactured gas of 525 b. t. u. heating value was being distributed. However, in 1932, when the pipeline was extended from Texas to Chicago, its close proximity to Muscatine and the promotional efforts of the Pipeline Company resulted in the introduction of natural gas to replace manufactured gas. According to a survey prepared by the Pipeline Company, it was asserted that natural gas could be substituted for manufactured gas, on a suggested experimental rate, competitive with other fuels, which would result in approximately the same net earnings. It was further contended that the loss in gross revenue resulting from the higher BTU content of natural gas could be offset by addition of house heating customers and by other new gas sales possibilities. Accordingly, a lateral extension from the main pipeline to Muscatine was made in 1932.

Results from a net revenue standpoint were discouraging from the beginning. It was found that house heating and other new types of gas use were impractical under the Pipeline Company's wholesale rate, and by the winter of 1933, it became evident that something must be done if operations were to produce any net return. Figures were then available to show a wide discrepancy between actual expenses and the figures forecast by the Pipeline Company; there were many contributing factors, such as an unexpectedly high leakage caused by introducing dry natural gas into a distribution system previously used for a gas of very different characteristics.

Early in 1934, after insistent demands by Iowa Electric Company, the Pipeline Company made a voluminous report tending to substantiate their original forecast, but even from that report, it was still obvious that the Company must have some relief. Previously a "50-cent Gas Sales [fol. 74] Contract" had been signed which was supposed to

reduce the cost of gas, but it developed that this contract was of only minor benefit, and in November of 1934, a method of computing and charging for demand under the 50-cent contract was changed and the "Supplemental Gas Sales Contract" was amended to reduce the rate for industrial gas from 12.5 cents per HCF to 10.5 cents per MCF.

During this same year, Company engineers investigated many methods and suggestions for reducing the Muscatine operating costs, even to the extent of considering the manufacture of 1000 BTU water gas in an effort to control the amount of the demand charge under the contract with the Pipeline Company. Nothing was accomplished, as there were not enough industrial consumers who could use any worthwhile quantities of dump (6¢) gas to justify investment in demand controlling equipment. The fact is that the "demand charge-commodity charge" type of rate is suitable for industrial areas such as Chicago, the Tri-Cities, and other large centers, but is not a rate that can be economically used by an ordinary gas company whose outlets for dump (6¢) gas are extremely limited. The little relief obtained under the contract modifications referred to above was wiped out in the late summer of 1937 when the Pipeline Company compelled the conversion of the majority of the industrial accounts that were purchasing gas under the 10.5 cent rate to a processing rate of 15.5 cents. At that time the Pipeline Company also took the position that dump (6¢) gas could not be sold to processing account customers, and this ruling further curtailed the outlets for dump (6¢) gas. Also the price of processing gas was increased from 15.5 cents to 16.5 cents at the beginning of 1939.

Through all these years of negotiation, the Pipeline Company has admitted the plight of its less metropolitan utility customers and encouraged the hope that more appropriate rate schedules would be forthcoming. This has been true in recent years, especially since the investigation by the Federal Power Commission and during the litigation which followed the order of the Commission. For example, in response to a letter on the matter in March 1941, a reply was received: "* * * it is my own personal opinion that our new rate structure will be altered sometime in the very near future * * * as soon as we have a definite rate to discuss, I intend to come to Cedar Rapids and go over it with you and your organization in detail. * * * I hope also that the rate will be such as to make house heating more at-

tractive for those properties presently served with natural gas." We are still awaiting such a rate schedule, which will result in a lower gas cost and will not penalize so severely the lack of outlets for dump (6¢) gas.

In Iowa, there being no public service commission, the power to fix utility rates is vested in the councils of the various cities and towns. A finding by your Court that the individual local consumers are entitled to the refund would be a retroactive determination, without a hearing, that Cen-[fols. 75-76] tral States Electric Company and Iowa Electric Company, the distributing companies, have been earning an adequate return (which was not the case), or that the rates charged to the individual local consumers are excessive, although no demand or complaint to that effect has been made in this territory. The fact that the charges by the Pipeline Company have been found to be excessive is not proof that the rates charged the individual local consumers by the distributing companies are likewise excessive. Such a determination, which would result in fixing rates for the future, should only be made after a full and complete hearing in a proper jurisdiction.

I believe you will be interested in a brief resume of the nine full years of operation in Muscatine. The average yearly revenue during this period amounted to $109,790.32, and the average annual expenses, including taxes, amounted to $81,567.96, leaving an average balance of $28,222.36 before proper depreciation and adequate return on investment, averaging $44,934.24 annually. Thus the average yearly loss has been $16,711.88. The new rate schedule ordered by the Federal Power Commission affords considerable relief, but does not quite cover adequate return and depreciation and, of course, does nothing to compensate for past losses sustained. We feel, therefore, that Iowa Electric Company and Central States Electric Company are entitled to any refunds that may be due within the power of the Court, and upon payment of the refund to Central States Electric Company, as the contracting company, a proper pro rata part thereof will be passed on to the Iowa Electric Company as subpurchaser under the original contract.

Very truly yours, (S.) Frank A. Fratcher, General Manager.

Frank A. Fratcher/R.

[fol. 77] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION, and ILLINOIS COMMERCE COMMISSION, Respondents

MEMORANDUM ON METHODS OF MAKING REFUNDS TO CUSTOMERS OF THE PEOPLES GAS LIGHT AND COKE COMPANY—Filed June 30, 1942.

Before EVANS and KERNER, Circuit Judges.

The first problem is to determine the net amount of the refund. To do this, it will be necessary to determine whether or not there is liability for income or excess profits taxes, and, if so, in what amount. It will also be necessary to anticipate with such accuracy as may be possible the cost of making the refund and any other expenses properly chargeable against the fund. The cost of making the refund, will depend upon the method employed. If one of the simple, short-cut methods hereinafter outlined can be followed, this cost would be but a small fraction of that which would be entailed in carrying out a fully elaborated method of arriving at the amounts to be refunded.

Two short-cut and practical methods of making this refund are as follows:

(a) The utility companies would furnish the figures from which the percentage which the sum to be refunded bears to the total amount charged to their customers would be determined. A list of the names and addresses of all such customers must be obtained and the refund mailed to them or credited on such customers' current bills. The [fol. 78] cost of carrying out the utilities' part in this method and the cost of sending refund checks to some 850,000 consumers of The Peoples Company would involve an additional expense. The total has been estimated at $25,000.

(b) An even less expensive method would be to have the company make the refund in its entirety by making a

percentage deduction from the amount of the customers' gas bills for some selected future month or months, and crediting the amount of the refund against the amounts due to the company from the customer. If this method could be used all cost of making and mailing checks would be avoided, and the cost of carrying out the Company's part of making the refund on this basis would not exceed $50,000.

It may be found that a distribution under method (a) would establish the most favorable possible basis for the necessary closing agreement with the Commissioner of Internal Revenue. It would relieve the Peoples Company of any possible liability for income and excess profits taxes in connection with the fund. We are thoroughly satisfied that there is no liability of any of the utilities for Federal income tax where this money is paid to the consumer. We also are convinced that there would be no liability of any utility that received the money from petitioners and paid the sum to its customers in the same year it was received. We are also well satisfied, that if the sum were paid by petitioners to the utilities and any one of the utilities should hold such payments, or take action which asserted ownership thereof, then said utility or utilities would be subject to a Federal income tax.

[fol. 79] (c) Another alternative method of making the refund would contemplate the recomputing of all bills actually rendered during the twenty or more month period in which the fund was accumulated, and the payment to each customer of a sum computed on the basis of bills rendered before discount for prompt payment, etc. This method, while more exact theoretically, would nevertheless involve many assumptions, and would perhaps create more problems than it would solve. The cost of making the refund to the Peoples Company's customers on this basis would be out of all proportion to the cost of either of the short-cut methods described above, probably failing somewhere between $350,000 and $500,000. The difference in cost would be so great that it is quite possible that in every instance the consumer would actually receive a larger refund under one of the more simplified methods (a) or (b). It should also be noted that by using one of the short-cut methods the time employed in making the refund would certainly be shortened.

Even if the labor could be obtained to carry out plan (c), we hold it should not be adopted. Whether plan (a) or plan (b) be adopted will depend on the report of our specially appointed official, Mr. Tappan Gregory, who is directed to investigate and report to us on the merits and practicability of both plans.

[fol. 80] Before we can determine the total amount to be refunded to the customers, we must be informed on the cost of distribution. Two substantial items are Clerk's fees of 1% of the fund (this is fixed by statute and goes to the U. S. Government ultimately, though collected by the Clerk) and postage of either 2 cents or 3 cents depending on where the customer lives. A third item is the cost of the services (labor mostly) of making checks and computing the amount of refund. The number of customers is estimated at over 850,000.

On this matter, too, we direct Mr. Gregory, as officer of this court, to investigate and report, and at an early date, what he estimates said cost will be.

Associated with this problem of costs, one utility serving Nebraska City asks that the refund go to it and not to its customers. That it and others may know and plan accordingly, we express our conclusion, and our holding, which is *all refunds which petitioners must make, belong to the consumers*, for whose benefit these proceedings were instituted. The utilities with whom petitioners contracted, were merely conduits, by which natural gas transported by petitioners was delivered to customers by utilities. The refunds do not belong and should not go to the utilities. The price paid by the utilities was fixed by contract. It, together with cost of services and interest, etc., was what made up the utilities' bill to their consumers. These rates or charges were approved by the Illinois Commerce Commission. The proceedings which were instituted by Federal Power Commission and furthered by the Illinois Commerce Commission to reduce the natural gas cost to the [fol. 81] utilities were for the benefit of the consumers. They so declare. Most of the utilities have steadfastly disclaimed any right to or interest in the refund. They realize that the proceedings were for the benefit of the consumers, not to enrich them. An exception is the Nebraska City utility, which believes it is the beneficiary of a windfall, to which it intends to hold on, if once it can get possession of it. It entertains the old and out-moded conception

of utility magnates and utility counsel which overlooked the trustee status of a public utility, whose excuse for existence is service to the public to whom it owes the duty to diligently endeavor to render ever better service at lower rates, as well as to earn a fair return on the capital invested in it. In fact it was the position of counsel for the Pipeline Company in the U. S. Supreme Court that under no circumstances could the utility claim any refund and that if anyone was entitled to the refund, it would be the consumers.

A public utility located in Nebraska City and another located in Iowa held contracts with petitioners. As between the two contracting parties, their contract would be binding, but the business of the petitioners was subject to regulation by the Federal Power Commission and also in part by the Illinois Commerce Commission. These two bodies sought to reduce charges to the consumers. As between petitioners and utilities they were not interested, but these boards were interested in reducing charges to the consumers. For the consumers the Federal Power Commission acted. Petitioners so understood the nature of the contract and defended on the ground that they had no contract with these consumers and owed nothing to them as consumers, nor were they subject to Federal regulation for the consumers' benefit. Nebraska City and all other utilities stood by and accepted the situation as it was [fols. 82-83] tendered by the pleadings and the parties. Now one or two of these utilities located where no state supervisory commission exists, are endeavoring to seize the fruits of the litigation brought for the consumers and retain the money for their own individual gain. It would be a gross travesty upon the proceedings, the outcome if they were to succeed. With their efforts in this respect, we have no sympathy.

The court will make an order on this finding that the money refunded by petitioners belongs to the consumers and none belongs to the utility or utilities.

June 30, 1942.

[fol. 84] In United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

v.

Federal Power Commission and Illinois Commerce Commission, Respondents

Order Designating Banks, etc.—July 1, 1942

Before Evans and Kerner, Circuit Judges.

Petitioners having deposited with the Clerk of this Court the amount which they claim to be due under the ruling of the Federal Power Commission, heretofore upheld by the United States Supreme Court, and the Court being desirous of distributing the deposit of said money among several banks instead of depositing it all in one bank and also fixing the date when the interest on the refunds at 2% thereon shall cease,

It is ordered that the following banks in Chicago be and they are selected as banks in which the money shall be deposited until the amounts due the consumers can be determined and checks drawn to the consumers for the amounts deposited.

Continental Illinois National Bank and Trust Company of Chicago, 230 S. Clark St.
First National Bank of Chicago, 38 S. Dearborn St.
Harris Trust & Savings Bank, 115 W. Monroe St.
American National Bank and Trust Company of Chicago, 33 N. LaSalle St.
Northern Trust Company, LaSalle & Monroe Sts.
City National Bank & Trust Co., 208 S. LaSalle St.

[fol. 85] It is further ordered that upon receipt of said money the Clerk deposit the same as follows:

$1,100,000 in the First National Bank of Chicago;
$1,100,000 in the Northern Trust Company of Chicago;
$1,000,000 in the City National Bank & Trust Co.;
$1,000,000 in the Harris Trust & Savings Bank;

$1,000,000 in the American National Bank and Trust Company of Chicago; and
$1,177,913.52 in the Continental Illinois National Bank and Trust Company of Chicago.

It is further ordered that the interest at 2% on the refunds which the petitioners must pay, shall be figured to April 10, 1942, the date when petitioner sought leave to deposit the money in court.

July 1, 1942.

[fol. 86] In the United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Statement of Iowa-Illinois Gas and Electric Company re Its Interest in Refund—Filed July 2, 1942

Iowa-Illinois Gas and Electric Company states that it makes no claim to any part of the fund deposited or to be deposited in court in the above-named proceedings as repayment of sums collected subsequent to July 23, 1940, in excess of rates fixed by the Federal Power Commission in its order of that date for nautral gas sold by Natural Gas Pipeline Company of America to its wholesale customers, including Iowa-Illinois Gas and Electric Company and its predecessors companies, Cedar Rapids Gas Company, Iowa City Light and Power Company, Ottumwa Gas Company, Peoples Light Company and Peoples Power Company. Iowa-Illinois Gas and Electric Company understands that the Court will, in the course of these proceedings, (1) provide for the equitable distribution of an aliquot portion of the fund to the retail customers of Iowa-Illinois Gas and Electric Company and its predecessor companies who, during the period in which the fund accumulated, purchased gas from Iowa-Illinois Gas and Electric Company and its predecessors, and (2) protect this Company against any expense which may be incurred in the administration of the

refund to the customers of this Company, as well as against [fol. 87] any liability with respect to income taxes on account of the refund.

Iowa-Illinois Gas and Electric Company, (Signed) by Thos. K. Humphrey, Its Attorney.

[File endorsement omitted.]

In the United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Statement of Iowa-Nebraska Light and Power Company Re Its Interest in Refund—Filed July 3, 1942

Iowa-Nebraska Light and Power Company states that it makes no claim to any part of the fund deposited or to be deposited in court in the above-named proceedings as repayment of sums collected subsequent to July 23, 1940, in excess of rates fixed by the Federal Power Commission in its order of that date for natural gas sold by Natural Gas Pipeline Company of America to its wholesale customers, including Iowa-Nebraska Light and Power Company, Iowa-Nebraska Light and Power Company understands that the Court will, in the course of these proceedings, (1) provide for the equitable distribution of an aliquot portion of the fund to the retail customers of Iowa-Nebraska Light and Power Company who, during the period in which the fund accumulated, purchased gas from Iowa-Nebraska Light and Power Company, and (2) protect this Company against any expense which may be incurred in the administration of the refund to the customers of this Company, as well as against any liability with respect to income taxes on account of the refund.

[fol. 87a] Iowa-Nebraska Light and Power Company, (Signed) by Geo. A. Lee & Lee & Sheldabl.

[File endorsement omitted.]

[fol. 88] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1941

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DECREE—Filed September 3, 1942

Before Evans, Sparks, and Kerner, Circuit Judges.

This case now comes before the court for the entry of a decree determining the ownership of the moneys heretofore paid to the clerk of this court by Natural Gas Pipeline Company of America, pursuant to an earlier order of this court, and for a determination, and for an order of disposition, of such funds, as well as the method of such disposition.

The court finds: (1) that the moneys, amounting to $6,377,913.52, less the Clerk's statutory fees of one percent and costs and expenses of distribution, belonging to the eligible ultimate consumers of the several utilities involved and should be so distributed; that none of the utilities is entitled to such funds.

(2) The court further finds that both the Federal Power Commission and the Illinois Commerce Commission have [fol. 89] taken the position that the funds should be distributed among the ultimate consumers of the gas, for whose benefit these proceedings were instituted.

(3) The court finds the amounts stated in the order of the Federal Power Commission, with interest thereon, and less deductions for expenses of distribution and clerk's fees, are the respective sums due the customers entitled to the

refunds. The following is a specific statement of the amounts of principal and interest.

Name	Amount Stated in Order of Federal Power Commission	Interest	Total
Chicago District Pipeline Company	$5,823,577.62	$88,056.18	$5,911,633.80
Cedar Rapids Gas Company *	99,693.18	1,462.23	101,155.41
Central States Electric Company	25,325.46	383.08	25,708.54
City of Nebraska City	23,622.03	369.20	23,991.23
Iowa City Light and Power Company*	31,638.60	476.52	32,115.12
Iowa-Nebraska Light and Power Company	19,026.90	283.25	19,310.15
Iowa Power & Light Company	7,812.45	120.85	7,933.30
Illinois Northern Utilities Company	7,158.78	13.56	7,172.34
Kewanee Public Service Company	9,291.70	79.40	9,371.10
Ottumwa Gas Company *	24,635.34	375.26	25,010.60
Peoples Light Company *	101,527.83	1,518.78	103,046.61
Peoples Power Company *	107,082.81	1,583.11	108,665.92
Princeton Gas Service Company	659.50	1.47	660.97
United Gas Service Company	2,097.66	40.77	2,138.43
Totals	$6,283,149.86	$94,763.66	$6,377,913.52

* Now Iowa-Illinois Gas & Electric Company.

The above allocation is subject to the rule as to "qualified communities" hereinafter stated. In the case of Chicago District Pipeline Company, the natural gas which it purchased from Natural Gas Pipeline Company of America was resold to The Peoples Gas Light and Coke Company, Public Service Company of Northern Illinois, Western United Gas and Electric Company and Northern Indiana Public Service Company; and it is to the eligible customers of these four last-named utilities that the refunds should be made. The total amount of excess charges paid by Chicago District Pipeline Company, as found by the Federal Power Commission in its order of April 23, 1942, was $5,823,577.62, exclusive of interest. This sum, together with interest thereon, after the deductions above mentioned, should be divided among the eligible customers of [fol. 90] the four utilities purchasing gas from Chicago District Pipeline Company on the basis of the contractual relations between the several companies involved. Such divisions, before such deductions, would be as follows:

Name	Amount Before Interest	Interest	Total
The Peoples Gas Light and Coke Company	$4,077,428.74	$61,653.33	$4,139,082.07
Public Service Company of Northern Illinois	1,230,403.45	18,604.47	1,249,007.92
Western United Gas and Electric Company	453,822.84	6,862.08	460,684.92
Northern Indiana Public Service Company	61,922.59	936.30	62,858.89
Total	$5,823,577.62	$88,056.18	$5,911,633.80

The above allocation is likewise subject to the rule as to "qualified communities" hereinafter stated.

(4) The court further finds, as to the customers eligible to receive refunds and the method of payment to each customer, as follows, to-wit: It is commonly recognized with respect to utility charges, that certain rates are established on a basis which meets competitive conditions in a particular field, rather than on a basis related solely to the costs of providing the particular service. Rates established for the sale of gas for industrial use and home heating are the principal rates of this character. The charges are determined in the light of the cost of some competing commodity or service, and are, or may be, lower than rates charged for other classes of gas sales. The wide differences between these rates are known to, and have the approval of, regulatory commissions. Moreover, heating and industrial gas sales represent "large volume" uses, for which the cost per unit is lower than where sales are made in smaller volume to large numbers of customers. In consequence, the court deems it equitable to eliminate, so far as practicable, gas sold for industrial and house heating uses from the basis of the refund. Gas sold at rates available solely to industrial customers is not to be provided for in determining those eligible to the refund. Similarly, gas for heating uses, will be largely excluded in determining such eligible customers.

Natural gas is sometimes distributed to ultimate consumers and sometimes is used as a constituent element in a mixture of gas which is distributed to the ultimate con- [fol. 91] sumers. Provision should be made so that this condition will not have the effect of producing inequitable results as among consumers. It would manifestly be inequitable to accord identical treatment to all gas customers

of a particular utility if, in one community, the natural gas was distributed, as such, or formed a large portion of the mixed gas, whereas in another community the natural gas was only a small component part of the gas supply. Precise accuracy in this matter cannot be achieved. We have concluded, and rule, that gas customers entitled to refunds hereunder shall include only those receiving gas service during the refund period in communities (including rural areas) in which at least 12½% of the gas supplied by the utility was derived directly or indirectly, from Natural Gas Pipeline Company. Such communities are referred to as "qualified communities." In the application of this rule, moneys allocable to the customers of a given utility as a group will be distributed only among those of the eligible customers who received service from that utility in qualified communities.

In arriving at a method of effecting the refunds, the court utilizes the generally known fact that the billing operations of any sizeable gas utility are conducted on a "cycle" basis, such that meter readings are made for varying portions of the utility's customers at varying periods of the month, and that because of the practice of "cycle" billing, it is not necessary that billings of an exact calendar month be used, since the same cyclical result may be obtained by starting with any billing unit in the standard cycle and continuing until a full cycle has been completed.

It is therefore ordered and decreed, That

1. The fund, including interest, aggregating $6,377,913.52, less all fees, costs, and expenses of distribution, belongs to and is the property of the eligible customers and does not belong to the utilities named in the next paragraph of this decree or to Chicago District Pipeline Company.

2. The fund, after the deductions above specified, shall be distributed by the court, in the manner hereinafter provided, among the eligible customers, of the following utilities:

The Peoples Gas Light and Coke Company.
Public Service Company of Northern Illinois.
[fol. 92] Western United Gas & Electric Company.
Northern Indiana Public Service Company.

Cedar Rapids Gas Company.*
Central States Electric Company.
City of Nebraska City.
Iowa City Light & Power Company.*
Iowa-Nebraska Light & Power Company.
Iowa Power & Light Company.
Illinois Northern Utilities Company.
Kewanee Public Service Company.
Ottumwa Gas Company.*
Peoples Light Company.*
Peoples Power Company.*
Princeton Gas Service Company.
United Gas Service Company.

All work in effecting such distribution shall be performed under the supervision of Mr. Tappan Gregory, as officer for the court. All expenses connected therewith, and the amounts paid therefor, and for services rendered, shall be fixed by this court save only the Clerk's fees which are fixed by statute.

3. Any customer of the utilities who received gas service during all or any part of the period from August 1, 1940 to March 31, 1942, inclusive, hereinafter called the "refund period," in a qualified community (except at an industrial gas rate) shall be eligible for a refund. He is hereby named "eligible customer." A refund shall be payable to any eligible customer on the basis of the amount billed or treated as having been billed to him during any complete monthly billing cycle commencing not earlier than the date hereof and ending not later than October 31, 1942, for gas service as above defined. The amount of such bill shall be multiplied by the number of months during the refund period in which he received such service. For such purpose, any fraction of a month for which a bill was rendered shall be treated as a month, but the number of months shall not exceed twenty. The resultant amount is the customer's "refund base." The aggregate of the refund bases shall be divided into the net amount available to the customers, in the aggregate, of such utility; and the refund payable to [fol. 93] each such customer shall then be computed by mul-

* Now Iowa-Illinois Gas & Electric Company.

tiplying such customer's refund base by the quotient so obtained.

4. To determine the amount of the refund payable to each customer:

(a) Each utility shall expeditiously prepare from its records a list of the customers in qualified communities to whom it has sent a bill for gas service (except industrial) during the billing cycle hereinbefore designated. Such list shall, without improper duplication, contain the name of each such customer, his address and the amount of his bill, and is referred to as the "trial register list."

(b) The utility shall ascertain, if conveniently possible, as to each such customer, whether or not he received such service throughout the refund period.

(c) To each customer found to have received such service throughout the refund period, there shall be immediately sent a notice approved by and over the name of Mr. Gregory, advising the customer that his eligibility for a refund has been established and he may disregard any request by advertisement or otherwise for information on the subject.

(d) To any customer not found to have received service throughout the refund period there shall be sent a notice approved by and over the name of Mr. Gregory, requesting the customer to advise the utility within five (5) days on an enclosed form provided for that purpose, the address or addresses at which the customer received service from such utility during any part of the refund period. Such notice shall also state that upon the furnishing to the utility of the information requetsed the customer's eligibility for a refund on account of service furnished by such utility will be ascertained without further notice to him and he may disregard any further request by advertisement or otherwise for information as to service furnished by that utility. Such notice shall state that if during any part of the refund period he received gas service from any other of the utilities named herein he should communicate with said other utility in response to a newspaper advertisement later to be published. The notice last above provided for may be combined with the notice provided for in (c) in a single notice, in Mr. Gregory's discretion.

[fol. 94] (e) The utility shall expeditiously add to the trial register list the names of any other persons shown by

its records to have received such gas service during the specified billing cycle, but who failed to receive bills, and shall send to such additional persons the appropriate notices.

(f) The utility shall likewise adjust the said list so as to state opposite the name of any customer so added to said list the amount determined as representing a normal billing to such customer in such billing cycle. Such amount shall be determined by the utility in accordance with its usual practice in computing "average" bills.

(g) The utility shall expeditiously adjust any customer's bill which during said billing cycle was abnormal, in accordance with its usual practice, so as to cause the said list to reflect a normal billing to that customer for such cycle.

(h) Mr. Gregory shall promptly, after October 31, 1942, cause to be published once in each qualified community, by means of one or more newspapers having general circulation in such community a notice addressed to the gas customers of all of the said utilities, advising them that any such gas customers (except industrial gas users) of such utilities during the refund period, who has not received a notice from such utility of the establishment of his eligibility, should give information to such utility, either upon a coupon furnished with such advertisement or otherwise, in writing, as to the address or addresses at which he so received such service. Such advertisement shall notify the customer that if he had theretofore given to a utility written information as to such gas service received by him from it, he should not repeat to that utility such information in response to the advertisement and shall also state that eligibility will depend upon the verification of the information by the records of the utility. The advertisement shall also state that unless the requested information shall be received from the customer within 15 days from the date of the advertisement (whether in response to the advertisement or otherwise) it will be disregarded in determining eligibility.

(i) On the basis of all the information so obtained, the utility shall, after verification thereof, further adjust its trial register list by including the names of any newly ascertained eligible customers.

[fol. 95] (j) Opposite the names of any customer so added to the list as provided in (i), the utility shall place an amount determined in accordance with its usual practice as representing a normal billing to such customer for the billing cycle on the basis of which such list was prepared.

(k) Opposite the name of each customer included in said list as so corrected, the utility shall state the number of months within the refund period during which such customer received from it gas service (except for industrial use) and shall strike the names of all customers who have not been ascertained to have received such service during any part of the refund period. It shall then state opposite each remaining name the refund base (being the product of said bill multiplied by the number of months of service shown).

(l) The utility shall add together the refund bases of all the customers on the final list, and shall show the total.

(m) The utility shall thereupon certify such total to Mr. Gregory as shown by the completed list prepared as above described (hereinafter referred to as the "eligible customer list"). The utility shall at the same time certify and furnish to Mr. Gregory a statement listing all the communities in which gas originally derived by it, directly or indirectly, from Natural Gas Pipeline Company of America entered into the gas supplied by the utility during the refund period or any part thereof. In such statement, the communities shall be divided into two groups, one group consisting of qualified communities and the other of unqualified communities, and the basis for such classification shall be shown therein as to each community or group of communities. Such statement shall also show the number of eligible customers in each qualified community.

(n) Mr. Gregory shall submit an estimate of all costs and expenses of effecting such refund. He shall report, as to each of the several utilities, the aggregate of the refund bases of its eligible customers.

(o) The court will then determine the total net amount available for refund, and the portions thereof applicable to the eligible customers, in the aggregate, of each utility.

(p) Mr. Gregory shall then cause each utility to enter on its eligible customer list the amount of refund payable to each customer.

[fol. 96] (q) Each utility shall thereupon certify to Mr. Gregory its eligible customer list showing the amounts entered pursuant to (p) above.

5. Following a determination of the amount of refund due to each eligible customer in the manner above stated, Mr. Gregory shall, as conveniently and speedily as may be done, cause refund checks to be prepared, in one or more forms as he may elect, drawn upon the banks which are depositaries of the funds so held by the Clerk of this court in this case, for the amounts of the refunds to which the said customers are respectively entitled hereunder. The Clerk of this court shall thereupon issue or cause to be issued the said checks, bearing his signature or a facsimile thereof, payable to the order of the respective customers in the proper amounts as so determined, and Mr. Gregory shall mail or cause to be mailed or otherwise delivered to each customer the check payable to him. Each of the said banks shall honor all checks so drawn on it by paying the respective amounts thereof to or to the order of the person or persons named therein, and said banks shall upon making such payments be absolved and released from all liability and claims with respect to any and all amounts so paid by them, respectively, and shall be entitled to full credit therefor in any and all accountings to be made with respect to said funds. Mr. Gregory is hereby authorized to determine the depositary bank or banks upon which such checks shall be drawn at any time, and the Clerk of this court shall, at Mr. Gregory's direction, transfer funds from any one or more of such depositary banks to any other one or more of such banks to facilitate the refunding herein contemplated. Each such refund check not presented for payment within 60 days from the date thereof to the depositary bank upon which it is drawn shall, upon the expiration of said period, be null and void, and an inscription on the face thereof shall so state. Each such refund check shall be accompanied by a statement, either on an attached stub or otherwise, on behalf of this court, approved by and over the name of Mr. Gregory, explaining to the payee the occasion for the refund which it represents.

6. It shall be proper for Mr. Gregory, and he is hereby authorized, to employ the services of any one or more persons or agencies selected by him to facilitate the refunding herein contemplated, and to include the expense so incurred

in his estimate of the cost of making the refund. Among [fol. 97] the agencies which it shall be proper for Mr. Gregory so to employ are the utilities herein named, or any one or more of them, but no utility so employed shall receive any compensation for such service beyond reimbursement for actual reasonable costs and expenses incurred by it by reason of the performance of such service. Such compensation to be fixed by this court.

7. The several utilities shall, upon order of this court, be reimbursed for all costs and expenses reasonably incurred by them in complying with the requirements of this decree or the requirements of Mr. Gregory hereunder. For such reimbursement and for payment of any other costs or expenses incurred under the authority of this decree (when approved by Mr. Gregory), checks in the proper amounts shall be drawn and signed by the Clerk of this court, at Mr. Gregory's direction, upon one or more of the said depositary banks, and shall be duly delivered to the payees thereof by Mr. Gregory.

8. The utilities named herein, and each of them, shall cooperate with Mr. Gregory with all reasonable diligence in carrying out the purposes of this decree and shall comply with any and all reasonable requests he may make of them hereunder in connection with the carrying out of the purposes of this decree; but neither Mr. Gregory nor any utility shall be liable on account of errors of a bookkeeping or clerical nature, or for the consequences of any act or omission occurring in the course of his or its carrying out, while acting in good faith and with reasonable diligence, the directions contained in or authorized by this decree.

9. Mr. Gregory and the Clerk of this court shall be entitled to rely upon any and all written representations or statements made to them or either of them by the utilities or any of them or by said depositary banks or any of them, or by any of said banks or any other agency designated by Mr. Gregory as disbursing agent for any part of the refund involved herein, in connection with the carrying out of the requirements herein directed or authorized. Likewise, each of the depositary banks shall be entitled to rely upon any and all written representations or statements made to such bank by the utilities or any of them or by Mr. Gregory or by the Clerk or by any person or persons employed by Mr.

Gregory or the Clerk in connection with the carrying out of the requirements herein directed or authorized.

[fol. 98] 10. Mr. Gregory shall, prior to the entry by this court of the further order referred to above in subparagraph (o) of Paragraph 4, make a report to this court, advising it of terms and conditions appropriate for inclusion in a further order of the court providing for steps to be taken and procedure to be followed in special situations which may be anticipated in connection with the making of the refunds, such as cases wherein the identity of the payee may be in doubt or in dispute, or the original payee may have died, or other situations, like or unlike the above, in which the making of the refund cannot necessarily be accomplished merely by delivery of a check to the specified payee as contemplated above.

11. Mr. Gregory shall from time to time, during the carrying out of the refund operations herein provided for, make such current reports to the court as the court may request, and, upon the completion of the work of distributing the refunds, shall make a report to the court, showing (1) such completion; (2) the general procedure followed by him in supervising the work and in reasonably assuring himself that the method of refund herein ordered has been properly and accurately carried out; (3) an itemized statement of the Clerk's charges and of all expenditures from the fund to cover costs and expenses of distribution; (4) the total amounts of the refunds (by groups of customers of the respective utilities involved); and (5) the balance remaining in the fund.

12. This court reserves and retains jurisdiction of this cause, the parties hereto, and the moneys deposited in the special funds in the said banks, depositaries hereunder, for the purpose of supervising and enforcing this decree and the payment of refunds herein ordered, and of making such other and further orders and decrees herein as may be necessary, suitable or appropriate to preserve, protect and settle the rights of the parties hereto and the rights of the several customers of said utility companies and of all persons having rights in said special funds; and nothing herein shall be deemed to preclude any party hereto from asking for the entry of additional or supplemental orders herein as above contemplated. The customers and former

customers, and all persons claiming by, through or on behalf of any such customer, and all other persons, are hereby enjoined and restrained from taking any action or instituting, maintaining or carrying on any suits or proceedings at [fol. 99] law, in equity, or otherwise, before any other tribunal, or in any other manner whatsoever, to obtain any such refunds, or any part thereof, in any manner except only such proceedings as they may take in this cause.

It is further ordered that the following named parties:

Natural Gas Pipe Company of America, 20, No. Wacker Drive, Chicago, Illinois,

Texoma Natural Gas Company, 20 No. Wacker Drive, Chicago, Illinois,

Mr. George I. Haight, 209 So. La Salle Street, Chicago, Illinois,

Mr. Warren T. Spies, 20 No. Wacker Drive, Chicago, Illinois,

Mr. J. J. Hedrick, 20 No. Wacker Drive, Chicago, Illinois,

Mr. S. A. L. Morgan, 20 No. Wacker Drive, Chicago, Illinois,

The Iowa-Illinois Gas & Electric Company, (Merger of Iowa-City Gas Light & Power Co., Ottumwa Gas, Peoples Light Co., Peoples Power Co.), attention Mr. Thomas K. Humphrey, Room 2200, 105 W. Adams Street, Chicago, Illinois,

The Iowa-Nebraska Light & Power Co., 923 Sharp Bldg., Lincoln, Nebraska; Mr. George A. Lee, General Counsel, and L. R. King, Pres., Gas & Elec. Bldg., Lincoln, Nebraska,

The Illinois Commerce Commission, Mr. Albert E. Hallett, 208 S. La Salle Street,

Hon. George F. Barrett, The Attorney General of Illinois, Springfield, Illinois,

The Federal Power Commission, Washington, D. C., Attention Messrs. George Slaff, and Richard J. Connor, General Counsel,

The Central States Elec. Co., Cedar Rapids, Iowa, Attn. Mr. Frank A. Fratcher,

The City of Nebraska City, Nebraska City, Nebraska, Mr. John M. Dierks, City Attorney,

The Iowa-Power & Light Co., 312 Sixth Ave., Des Moines, Ia.,

Kewanee Public Service Co., Kewanee, Illinois,
Princeton Gas Service Co., Princeton, Illinois,
[fol. 100] United Gas Service Co., Bartlesville, Oklahoma, attn. Lloyd A. Rowland, Union Nat. Bank Bldg., Bartlesville, Okla.,
Central Power Co. and Consumers Public Power District, Attn. William H. Pitzer, Building & Loan Bldg., Nebraska City, Nebraska,
Western United Gas & Elec. Co., 20 No. Wacker Drive; Chicago, Illinois,
Mr. Benjamin Alschuler, 32 Water Street, Aurora, Illinois,
Chicago District Pipeline, 122 So. Michigan, Chicago, Illinois,
Peoples Gas Light & Coke Co., 122 So. Michigan, Chicago, Illinois,
Mr. Kenneth F. Burgess, 11 So. La Salle Street, Chicago, Ill.,
Mr. Francis L. Dailey, 122 So. Michigan, Chicago, Illinois,
Public Service Company of Northern Illinois, 72 W. Adams St., Chicago, Illinois, Mr. Harry J. Dunbaugh, 72 W. Adams St., Chicago, Illinois,
Illinois Northern Utilities,
The Attorney General of Iowa, representative of the gas consumers of Iowa, Des Moines, Iowa,
The Attorney General of Nebraska, representative of the gas consumers of Nebraska,
The Attorney General of Oklahoma, representative of the gas consumers of Oklahoma,
The Attorney General of Indiana, representative of the gas consumers of Indiana, Indianapolis, Indiana,
The Northern Indiana Public Service Co.,
Mr. Marshall Joyce, A. J. Joyce, Oscar Claessens, Otto Millard, R. Lyon, R. A. Nelson, Mrs. Barbara Schmit, F. Glenn Shehee, John A. Quigley, S. O. Hansen, John C. Ide, S. Morcel, Jr., Jerome J. Novy, Leonard W. Wolfe, A. R. Ramser, G. J. Hermes, Dr. Arthur R. Weihe, Wilbur Millard, M. J. McDermott, Ernest A. Bederman, Benjamin Scheftel Gardner E. Larson —represented by Attorneys Floyd Thompson, Anan Raymond, and Albert E. Jenner, Jr., 11 So. La Salle St., Chicago, Ill.
Cedar Rapids Gas Co.,

[fols. 101-102] and whomever else it may concern show cause if any they have, within twenty days after service of this decree, why this decree, as well as any other orders of this court entered in this matter respecting the distribution of the funds involved, and the costs and expenses of said distribution, should not be binding upon them.

The court requests the Illinois Commerce Commission and the Attorney General of Illinois to appear and represent all the customers and advise the court, if either finds any inequities in the plan of distribution set forth in this decree.

By the Court:

—— ——, Clerk.

September 3, 1942.

* * * * * * *

[fol. 103] In the United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Order Extending Time—September 22, 1942

On further consideration by the court of the decree entered in the above entitled cause on September 3, 1942, it is

Ordered that the time within which the parties therein named and referred to shall show cause why the decree should not be binding upon them be and it hereby is extended for a further period of fourteen (14) days from and after the expiration of the twenty (20) day period now specified in the said decree for that purpose.

Enter: (S.) Evan A. Evans, William M. Sparks.

September 18, 1942.
9-22-1942.

* * * * * * *

[fol. 104] And afterwards, to-wit: On the nineteenth day of November, 1942, the following further proceedings were had and entered of record, to-wit:

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA, et al., Petitioners,

vs.

FEDERAL POWER COMMISSION, et al., Respondents

ORDER MODIFYING DECREE OF SEPT. 3, 1942—November 19, 1942

It is hereby ordered by the Court that the decree heretofore entered on September 3, 1942, be modified in the following respect: The fourth paragraph on page 7, being paragraph (h), is amended to provide for a period of five days instead of fifteen days.

[fols. 105-106] IN UNITED STATES CIRCUIT COURT OF APPEALS

* * * * * * *

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

ORDER RE: CENTRAL STATES ELECTRIC COMPANY—November 24, 1942

There has arisen in this matter a distinct issue relative to the distribution of the refund to the Central States Electric Company, of Cedar Rapids, Iowa, which purchased gas from the Natural Gas Pipeline Company of America. The facts are, that during the refund period in question this company

purchased from the Natural Gas Pipeline Company, gas, for which a refund of $25,708.54 has been allocated.

The Central States Electric Company has raised the issue as to whether it, or its 3,715 customers, have the right to the refund.

Inasmuch as the determination of this matter would inevitably consume time, by whomever determined, we have concluded that the interest of the Iowa purchasers in this fund, to-wit:, $25,708.54, shall be, and it is hereby, separated from fund heretofore deposited, and it shall be separately dealt with. This separation is made so that there may be no delay in the distribution of the vastly greater portion of the fund, to those determined to be entitled thereto.

(S.) William M. Sparks, Otto Kerner.

November 24, 1942.

[fol. 107] In the United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Before Evans, Sparks and Kerner, Circuit Judges

Supplemental Decree—December 15, 1942

This cause now comes on to be heard upon the report of Mr. Tappan Gregory, as officer for this Court to effect and supervise the distribution of refunds, filed pursuant to paragraph 10 of the decree entered herein on September 3, 1942, advising the Court of certain terms and conditions appropriate for inclusion in a further order of the Court providing for steps to be taken and procedure to be followed in special situations which may be anticipated in connection with the making of the refunds.

In and by paragraph 12 of the said decree of September 3, 1942, it was ordered that the parties named therein show cause, within 20 days (extended to 34 days by order entered

September 22, 1942) after service of said decree, why said decree, as well as any other orders of this Court entered in this matter respecting the distribution of the funds involved, and the costs and expenses of said distribution, should not be binding upon them. It appears to the Court that copies of said decree were duly served by the Clerk on or shortly after September 4, 1942 upon all of said parties; and that, in response to said show cause order, or otherwise, none of said parties made any showing to this Court why said decree should not be binding upon them, with the exception of Marshall Joyce, et al., whose amended and supplemental motion for leave to intervene (attached to which [fol. 108] motion were certain suggestions with respect to said decree) was overruled by order entered herein on October 15, 1942, and with the further exception of Central Power Company and Consumers Public Power District of Nebraska, the claims and interest of which two parties, together with the claim and interest of the City of Nebraska City, to and in a portion ($23,991.23) of said funds were, by order entered herein on October 12, 1942, segregated and directed to be dealt with separately, and with the further exception of Central States Electric Company, the claim and interest of which Company to and in a portion ($25,708.54) of said funds were, by order entered herein on November 24, 1942, segregated and directed to be dealt with separately. The Court therefore finds that said decree, as to all parties except said Central Power Company, Consumers Public Power District of Nebraska, Nebraska City and Central States Electric Company, became effective on September 3, 1942 and is now in full force and effect.

It also appears to the Court from said report that it may be anticipated that some of the persons whose names will appear on the trial register lists or eligible customer lists of the utilities are, or prior to the time that the refund checks issued to such persons are presented for payment will be, deceased, insane or otherwise incompetent, adjudicated bankrupts, incarcerated in prisons or concentration camps, enemy aliens or other aliens residing in countries whose credits or other assets are frozen, dissolved corporations or partnerships, or personal representatives, trustees, receivers or other fiduciaries whose fiduciary relations will have been discharged or otherwise terminated; and that it may be anticipated that some of the names which will appear on said lists will be misspelled or fictitious or assumed

by the persons who actually received the gas service, and that [fol. 109] there will be other persons who were receiving gas service in the names of other persons, whose correct names should be or should have been included in said lists, and that special provisions must be made for the payment of refunds in such special situations.

And it also appearing to the Court that additional provisions should be made to facilitate the making of refunds,

It is therefore ordered, adjudged and decreed as follows:

1. In those cases where a person notifies Mr. Gregory in writing that he received gas service during the whole or a portion of said refund period at a given address in the name of another person and claims the refund due on account of such service, and such notice is received by Mr. Gregory prior to the time the adjustments in the trial register list of the utility furnishing such service in accordance with paragraph 4(i) of the decree of September 3, 1942 have been completed, Mr. Gregory shall promptly advise such utility of such claim, and such utility shall examine its records and trial register list, and (a) if it finds that no eligible customer is then shown upon said list to be entitled to a refund for gas service furnished at such address during the period designated in such claim but that gas service was furnished at that address and during that period to some person, the utility shall add the name of the person, who according to its records received such service, to its trial register list as an eligible customer for such period; or (b) if it finds that the name of the person to whom, according to the records of the utility, gas service was furnished at such address during the period designated in such claim is then shown upon said trial register list, such utility shall permit the name of such person to remain on said list; provided, however, in all such cases the utility shall place an appropriate notation opposite the name added to or the name permitted to remain on said list pursuant to the provisions of (a) or (b) hereof to indicate that [fol. 110] another person claims to be the eligible customer entitled to the refund on account of such service, and no refund check shall be mailed or otherwise delivered to the person opposite whose name such notation has been placed or to the person making such claim until the latter person shall have had an opportunity to establish his right, if any,

to said refund in the manner prescribed for establishing similar claims under paragraph 2 hereof.

2. Where a refund check has been issued and mailed or otherwise delivered to an eligible customer, and another person, within sixty (60) days after the date of such check, claims to have received the gas service during the whole or a portion of the refund period for which said refund check was issued, and in writing requests Mr. Gregory to issue a refund check to him in lieu of the original refund check issued to said eligible customer, and where at the time of making such request said original refund check has not been paid by the depositary bank upon which it was drawn but has been returned to Mr. Gregory or has become void by the passage of time, and where such other person furnishes to Mr. Gregory, within ten (10) days after making such request, such affidavits, releases or waivers as Mr. Gregory may reasonably require, Mr. Gregory shall send a notice in writing addressed to the person who according to the records of the utility received gas during the period and at the address in question, at his last known address, advising such person that such claim has been made; and in the event the person to whom such notice is directed shall fail to notify Mr. Gregory in writing within fifteen (15) days of the date of mailing such notice that he objects to the claim of such other person, the person making such claim shall be an eligible customer (in lieu of the original eligible customer), and Mr. Gregory shall prepare or cause to be prepared and the Clerk of this Court shall issue or cause to be issued a refund check which shall be payable to [fol.111] and mailed or otherwise delivered to said other person; provided, however, if the person making such claim furnishes Mr. Gregory with evidence satisfactory to him, showing that the person whose name appears on the records of the utility as the customer who received gas service during said period at said address, died prior to or during the refund period and the claim of such other person relates only to the refund payable for gas service rendered after the date of death of such deceased customer, no notice of the claim of such other person need be given.

3. In those cases where Mr. Gregory receives written notice prior to the mailing or other delivery of a refund check that an eligible customer entitled to such refund is

(a) deceased, (b) insane or otherwise incompetent to handle his own affairs, (c) a partnership or corportion which has been dissolved or which has ceased doing business, (d) incarcerated in any prison or penitentiary and by reason thereof is by law rendered incapable to receive, execute a lawful release with respect to and receipt for such refund, (e) an alien enemy confined in a concentration camp within the United States or an alien enemy or other alien residing without the United States in a country the credits and other assets of which are frozen, or (f) a receiver, trustee, administrator, executor, conservator, trustee in bankruptcy or other representative or agent who has been dischaged as such representative or agent; or where Mr. Gregory receives written notice prior to the mailing or other delivery of such refund check that a receiver, trustee in bankruptcy or other representative or agent has been appointed for and is entitled to the possession of the property of an eligible customer, Mr. Gregory shall not mail or otherwise deliver a refund check payable to such eligible customer, but shall delay the mailing or other delivery of such check until the persons entitled to the refund of such eligible customer shall have an opportunity to establish [fol. 112] their right to such refund by such evidence as Mr. Gregory may reasonably require, in accordance with the provisions of this Supplemental Decree. Such evidence shall be submitted to Mr. Gregory within 15 days after Mr. Gregory shall have mailed a request for the submission of evidence. In each case where a question arises under the terms of this paragraph 3, or other provisions of this Supplemental Decree, as to the person or persons entitled to receive a refund, the aggregate amount of the refund payable to such person or persons shall only be that which is specified, as applicable to such case, in the eligible customer list.

4. The Clerk of this Court may issue or cause to be issued and Mr. Gregory may mail or otherwise deliver a new refund check or checks payable to the person or persons entitled thereto as determined in accordance with the provisions of this Supplemental Decree, in lieu of a refund check originally issued and mailed or otherwise delivered to an eligible customer, when requested in writing by the payee of such original check or the person entitled to the refund represented by such check, in every case where the name

of the payee is misspelled, or where the payee thereof is (a) deceased, insane or otherwise incompetent to handle his own affairs (b) a partnership or corporation which has been dissolved or which has ceased doing business, (c) incarcerated in any prison or penitentiary and by reason thereof is by law rendered incapable to receive, execute a lawful release with respect to and receipt for such refund, (d) an alien enemy confined in a concentration camp within the United States or an alien enemy or other alien residing without the United States a country the credits and other assets of which are frozen, (e) a receiver, trustee, administrator, executor, conservator, trustee in bankruptcy or other representative or agent who has been discharged as such representative or agent, or (f) an eligible customer, all or substantially all of whose assets have been taken over by a receiver, trustee in bankruptcy or other representative or agent; provided, (1) such request is received by Mr. Gregory within ninety (90) days from the date of such original refund check, and (2) the original refund has not been paid by the depositary bank upon which it [fol. 113] was drawn but has been returned to Mr. Gregory at or prior to the time such request is made, and (3) the person making such request furnishes to Mr. Gregory within fifteen (15) days thereafter such affidavits, releases, waivers or other documents as Mr. Gregory may reasonably require in accordance with the provisions of this Supplemental Decree.

5. In those cases where Mr. Gregory has notice in accordance with the provisions of preceding paragraphs 3 or 4 hereof that the eligible customer entitled to such refund has died, and where he has received an affidavit substantially in the form of Exhibit A or Exhibit B attached hereto, the refund shall be made to the person or persons hereinafter prescribed:

(a) In every case where no probate proceedings have been had in connection with the estate of a deceased eligible customer who would have been entitled to a refund if living, any refund to which such deceased eligible customer would have been entitled if living shall be paid to the person or persons entitled thereto as determined by the provisions of Sections 11-14, 178, 179 and 324 of the Probate Act of the State of Illinois,

without regard to the amount or value of the personal property left by such decedent, without regard to whether or not such decedent left what purports to be a will, and without regard to whether or not the debts of the deceased eligible customer have been paid, and without regard to the domicile of such deceased eligible customer.

(b) In every case where an eligible customer who would have been entitled to a refund if living, has died intestate and probate proceedings were held in connection with his estate but such probate proceedings have been closed and the administrator of such estate has been discharged, the refund to which such deceased eligible customer would have been entitled shall be paid to the person or persons entitled thereto as determined by the provisions of Sections 11-14, 178, 179 and 324 of the Probate Act of the State of Illinois, without re- [fol. 114] gard to whether or not the debts of such deceased eligible customer have been paid and without regard to the domicile of said deceased eligible customer.

(c) In every case where an eligible customer who would have been entitled to a refund if living, has died leaving a will and such will has been probated but the probate proceedings have been closed and the personal representative has been discharged, the refund to which such deceased eligible customer would have been entitled shall be paid to the residuary legatee or legatees designated in and by said will, and if there be no residuary legatee or legatees, then to the person or persons entitled thereto as determined by the provisions of Sections 11-14, 178, 179 and 324 of the Probate Act of the State of Illinois, without regard to whether or not the debts of such deceased eligible customer have been paid, and without regard to the domicile of said deceased eligible customer.

(d) In every case where an eligible customer who would have been entitled to a refund if living, has died and probate proceedings in connection with his or her estate are still pending when such refund becomes payable, such refund shall be paid to the executor or administrator of such estate.

(e) Where a person determined to be entitled to a refund under the foregoing sub-paragraphs (a) to (d), inclusive, is a minor, the refund check for that portion of the refund to which such minor is entitled may be issued to the duly constituted guardian, if any, of such minor; or if there be no such guardian then to the natural guardian of such minor (i. e., the surviving parent, if any, or eldest brother or sister if there be no surviving parent and if such eldest brother or sister is of legal age, otherwise to any one of the adult next of kin) upon delivery to Mr. Gregory of the written receipt of such natural guardian stating that he or she has [fol. 115] received such refund and will hold or expend the same for the benefit of such minor; or, in Mr. Gregory's discretion, to such minor.

(f) Where under the provisions of the foregoing paragraphs (a) to (e) inclusive, more than one person is determined to be entitled to the refund, then in the discretion of Mr. Gregory (1) the refund check may be made payable to all of such persons and mailed or otherwise delivered to any one of them, or (2) separate payments may be made to such persons or any of them, as their interests may appear to Mr. Gregory, or (3) the refund, or any part thereof, may be paid to any one of such persons upon the latter's furnishing to Mr. Gregory a written undertaking to account to all persons entitled thereto for their proper shares of such payment.

6. In those cases where Mr. Gregory has notice in accordance with the provisions of preceding paragraphs 3 or 4 hereof, that the eligible customer entitled to such refund is insane or otherwise incompetent to handle his own affairs, the refund shall be paid to the duly constituted conservator, if any, of such customer, and if there be no such conservator then to the spouse of such customer, if any, and if none, to the eldest adult son or daughter of such customer, and if none, then to any one of the adult next of kin of such customer; such refund to be made on the basis of any affidavits which Mr. Gregory may require and upon delivery to Mr. Gregory of the written receipt of the person so receiving such refund stating that he or she has received and will hold or expend the same for the benefit of such insane or otherwise incompetent customer.

7. Where a partnership, whether still in existence or dissolved, was the eligible customer entitled to any refund, the [fol. 116] refund check shall be issued payable to the order of such partnership or jointly in the names of the individual partners or former partners of whose identity Mr. Gregory may be advised and mailed or otherwise delivered to any one or more of such partners or former partners, and neither the depositary banks, nor Mr. Gregory nor the Clerk of this Court shall be under any obligation to see to the appropriate division of the proceeds of such check among the persons entitled thereto.

8. In those cases where Mr. Gregory has notice in accordance with the provisions of preceding paragraphs 3 and 4 hereof, that the eligible customer entitled to such refund is a corporation which has been dissolved or which has ceased doing business, the refund check shall be made payable, in the discretion of Mr. Gregory, either to the corporation or to the person who at the time of such dissolution or termination of business occupied the office of treasurer of such corporation, such refund to be made on the basis of any affidavit which Mr. Gregory may require and, if payable to such treasurer, upon delivery to Mr. Gregory of a written receipt by such treasurer stating that he has received such refund and will hold or expend the same for the benefit of the person or persons entitled to the assets of such corporation.

9. In those cases where Mr. Gregory has notice in accordance with the provisions of preceding paragraphs 3 or 4 hereof, that the eligible customer entitled to such refund is incarcerated in any prison or penitentiary under circumstances which do not deprive him of the right to receive, give a lawful release with respect to and receipt for moneys owing or payable to him, any such refund check shall be issued and forwarded to such eligible customer at such prison or penitentiary; provided, however, that where in such case Mr. Gregory is duly and reliably informed that such eligible customer by reason of such incarceration is by law rendered incompetent to receive, execute a lawful [fol. 117] release with respect to and receipt for such refund, then such refund shall be paid to the spouse of such person, if any, and if none, to the eldest adult son or daughter of such person, and if none, then to anyone of the adult next of kin of such person, such refund check to be issued

on the basis of any affidavit or affidavits which Mr. Gregory may require and upon delivery to Mr. Gregory of the written receipt of the person so receiving such payment stating that he or she has received and will hold or expend such money for the benefit of such incarcerated person.

10. In those cases where Mr. Gregory has notice in accordance with the provisions of preceding paragraphs 3 or 4 hereof, that during the period for which refunds are to be made there has been a change of customer from an original customer to a receiver, trustee, administrator, executor, conservator, trustee in bankruptcy or other representative or agent of such customer, and it appears to Mr. Gregory that the receiver or such other representative is still acting as such, the refund, both for the period for which said customer received service and for the period during which said receiver or other representative received service, shall be paid to such receiver or other representative.

11. In those cases where Mr. Gregory has notice in accordance with the provisions of preceding paragraphs 3 or 4 hereof, that during the period for which refunds are to be made there has been a change of customer from the original customer to a receiver or other representative of such customer and thereafter a subsequent change back to the original customer, the refund due on account of gas service during any or all of the three periods mentioned shall be paid to the original customer; and where such notice shows that the gas service was rendered after the termination of the second period (receivership) mentioned, to a customer other than the original customer for whom the receiver or other representative was acting or appointed, the refund due on account of gas service rendered [fol. 118] during all of such period shall be paid to such other customer if it appears to Mr. Gregory that such other customer is in fact the original customer or a reorganization of the original customer as a result of such receivership or other proceedings, or if it similarly appears that such other customer purchased the business of such original customer pursuant to an arrangement whereby such other customer acquired all or substantially all of the assets, including accounts receivable, of the original customer; and if it appears to Mr. Gregory that there is no connec-

tion whatsoever between such original customer or the receiver or other representative for such original customer, and such other customer, then only the portion of the refund due for the period during which gas service was rendered to such other customer shall be paid to such other customer.

12. In those cases where Mr. Gregory has notice in accordance with the provisions of preceding paragraphs 3 or 4 hereof, that gas service has been terminated during the period when a receiver or other representative was the customer and a final bill on account of gas service was issued in the name of such receiver or other representative or his or its successor in interest, the refund on account of gas service during said period shall be paid to such receiver or other representative or successor, as the case may be, or to the assignee of such receiver, other representative or successor, whether the assignee be the original customer for which the receiver or other representative or successor was acting or appointed, or a third party.

13. In those cases where Mr. Gregory has notice in accordance with the provisions of preceding paragraphs 3 or 4 hereof, that during the refund period there has been a change of customer from a receiver, trustee, administrator, executor, conservator, trustee in bankruptcy or other representative or agent of a customer, to a successor receiver [fol. 119] or other representative, and such successor is still acting as such, the refund, both for the period for which the predecessor receiver or other representative would have been entitled to receive a refund but for such succossor, and for the period during which such successor was the customer, shall be paid to such successor.

14. In those cases where Mr. Gregory has notice that the eligible customer or the person entitled to the refund or a part thereof is a "blocked national" or is an alien whose property is "frozen" or is subject to the control of the Alien Property Custodian or other officer of the United States, such refund or part thereof shall be paid to or as authorized by the proper officer of the United States entitled thereto under the applicable laws of the United States, or if no such officer is entitled thereto under said laws, then no payment of such refund or part thereof shall be made until the further order of this Court.

15. Except as in this Supplemental Decree otherwise provided, no lien, garnishment, assignment or other transfer of or power of attorney relating to any refund or part thereof due under the decree entered herein September 3, 1942, or under this Supplemental Decree, shall be valid or enforceabe as a claim against the depositary banks, Mr. Gregory, the Clerk of this Court or the funds held by the Clerk of this Court; provided, however, that, subject to the provisions of the Soldiers and Sailors Civil Relief Act of 1940 as amended, the depositary banks, Mr. Gregory and the Clerk of this Court may recognize an assignment, power of attorney or other written authorization executed by an eligible customer who is in the armed forces of any of the United Nations, and the refund represented by any refund check issued and paid in reliance upon such authority shall thereupon be considered wholly satisfied and discharged to the extent of the payment so made. Nothing herein contained, however, shall be construed so as to prevent or prohibit the endorsement or negotiation of [fol. 120] refund checks issued pursuant to this Supplemental Decree or other order of the court herein by attorney in fact or other means recognized in the field of commercial instruments.

16. The only obligation of the banks, depositaries hereunder, shall be to pay to the payees thereof, or to their order, any and all checks which may be drawn against said deposited funds, to the extent thereof, without any duty or obligation upon the part of said banks to see to the propriety of the issuance thereof. The banks shall be entitled to pay, and to charge such deposited funds for, all such checks regardless of by whom or by what means the actual or purported facsimile signatures thereon may have been affixed thereto, if such signatures resemble the facsimile specimens duly certified by Mr. Gregory. Said banks shall, upon making such payments, be absolved and released from any liability and claims with respect to any and all amounts so paid by them respectively, and shall be entitled to full credit therefor in any and all accountings to be made with respect to said funds.

17. The banks shall be under no duty or obligation to stop payment of any checks, nor shall they be under any duty or obligation to pay any refund check upon the endorsement of any executor, administrator, heir, legatee,

conservator, trustee, receiver, guardian or other representative of the payee or of the estate of a deceased payee of any such refund check, but such banks are hereby permitted at their election to pay any such check to, or upon the order of, any such representative if such representative is entitled to receive payment of the refund represented by such check as in this Supplemental Decree provided.

18. Neither Mr. Gregory nor the Clerk of this Court nor any utility or person delegated by Mr. Gregory or by the Clerk of the Court shall be liable on account of any errors or mistakes in judgment, or for the consequences of any act or omission occurring in the course of their carrying out, while acting in good faith and with reasonable dili- [fol. 121] gence, the directions contained in or authorized by this Supplemental Decree, or any other orders entered by the Court herein. Neither Mr. Gregory nor the Clerk of this Court nor the depositary banks shall be required to see to the division of the proceeds of any refund check issued and delivered pursuant to the provisions hereof or of any other order of the Court herein among any persons entitled thereto, or to the application of such proceeds.

19. Whenever any refund check issued and mailed or otherwise delivered pursuant to the provisions hereof or of any other order of the Court herein has been paid, or has been outstanding and unpaid for a period of sixty (60) days or longer from the date thereof, or has been returned to Mr. Gregory because of the inability of the Post Office Department to locate the addressee thereof and is still held by Mr. Gregory sixty (60) days or longer after the date of such check, the refund covered by such check shall be considered wholly satisfied and discharged to the extent of the amount thereof, and no person shall thereafter have any valid claim on account of such refund or against the fund held by the Clerk of this Court to the extent of the amount of such check.

20. Mr. Gregory is hereby authorized and directed to specify as to each of the utilities, a date after which no further information received from customers (whether in response to any notice, advertisement or otherwise) shall be considered by such utility in completing its eligible customer list; and after the total refund base for any utility, as shown by the completed eligible customer list of such utility, shall have been certified to Mr. Gregory

pursuant to sub-paragraph 4(m) of said decree, no further changes shall be made in such list.

[fol. 122] 21. This Supplemental Decree is entered for the purpose of implementing the decree entered herein on September 3, 1942, and is not to be construed as superseding the provisions contained in or limiting the force of such former decree.

By the Court:

——— ———, Clerk.

[fol. 123] EXHIBIT "A"

Affidavit Re Estate Less than $500 in Value

(The blank spaces in this form should be carefully filled in before execution. Of paragraphs (a), (b) and (c), the applicable paragraph should be retained and the other two paragraphs should be stricken.)

STATE OF ,

County of ss.

, whose address is

, being first duly sworn deposes and says:

(name of decedent) , a resident of

, County of

, State of , died on the day of , 19 , leaving personal estate of less than $500 in value in the aggregate; and that from August 1, 1940, to March 31, 1942, said decedent was a gas customer of (name of utility) in the (village, town or city) of , State of , at the addresses and during the periods, respectively, as follows:

(Address from to
(Address from to
(Address from to

That said decedent, if living, would be entitled to a refund check as an eligible customer of said utility, issued by the

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, and drawn upon The First National Bank of Chicago, which is the depositary of the funds held by the Clerk of said court out of which said refund is required to be made under and pursuant to the provisions of the decree of said Circuit Court of Appeals entered September 3, 1942, [fol. 124] in the cause entitled "Natural Gas Pipeline Company of America and Texoma Natural Gas Company vs. Federal Power Commission and Illinois Commerce Commission, No. 7454."

That no letters testamentary or of administration are now outstanding on the estate of said decedent and no petition for any such letters is pending in any state; that all funeral expenses of decedent have been paid, and that thirty days have elapsed since the death of said decedent.

(a) That under Sections 178 and 179 of the Probate Act of the State of Illinois, a widow's (child's) award is allowable to the widow (child); that this affidavit is made to induce Mr. Tappan Gregory and the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit to prepare, issue and mail or otherwise deliver a check in the amount to which said decedent would be entitled, if any, payable to , who is the widow (child), all in accordance with the provisions of the decrees and orders of said Court.

(b) That no person is entitled, under the provisions of the decrees of said Court, and Sections 178 and 179 of the Probate Act of the State of Illinois, to a widow's or child's award; that decedent died intestate; that there are no creditors of the decedent, and that the names, places of residence, ages and relationship of the heirs of the decedent, as determined under the provisions of Section 11-14 of said Act, are as follows:

Name	Relationship to Decedent	Age	Address

That this affidavit is made to induce Tappan Gregory as officer for the United States Circuit Court of Appeals for

the Seventh Circuit and the Clerk of said Court to prepare, issue and mail or otherwise deliver to each of said heirs a refund check for that portion of the amount of such refund to which said decedent would be entitled as an eligible customer, if living, to which such heir is entitled under Sections 11-14 of the Probate Act of the State of Illinois.

(c) That decedent left a last will which was admitted to probate in the State of ..... in the ..... Court of ..... County in proceedings numbered ..... ; that a certified copy of said will is attached hereto; that no proceedings to contest said will are pending; that no person is entitled under the provisions of the decrees of this Court and Sections 178 and 179 of the Probate Act of the State of Illinois to a widow's or child's award; that there are no creditors of the decedent, and that the names, ages, relationship and places of residence of the heirs of the decedent, as determined under the provisions of Sections 11-14 of said Act, and the residuary legatees under the will are as follows:

[fol. 125]

Name	Relationship to Decedent	Age	Address
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

That this affidavit is made to induce Tappan Gregory as officer for the United States Circuit Court of Appeals for the Seventh Circuit and the Clerk of said Court to prepare, issue and mail or otherwise deliver to each of said residuary legatees or to each of said heirs of said decedent, if no residuary legatee is named in said will, a refund check for that portion of the amount of the refund to which said decedent as an eligible customer would be entitled, if living, which such legatee or heir is entitled to receive under the said decrees and orders and the provisions of said Act.

That affiant has knowledge of the facts herein stated and that the same are true.

.....
(Signature of Affiant)

Subscribed and sworn to before me this ..... day of ....., 194 . —— ——, Notary Public.

[fol. 126] EXHIBIT "B"

Affidavit Re Estate More Than $500 In Value

(The blank spaces in this form should be carefully filled in before execution. Of paragraphs (a) and (b), the applicable paragraph should be retained and the other paragraph should be stricken.)

STATE OF ,

County of , ss.

, whose address is , being first duly sworn, on oath deposes and says:

That (name of decedent) , a resident of , County of , State of , died in the County of , State of , on or about the day of , 19 , leaving property or estate, the value of which exceeded $500, and that there have been no proceedings in probate upon said estate.

(a) That said decedent died intestate; that no tax is due to the United States, the State of Illinois or the state of the domicile of said decedent by reason of the death of said decedent; that all debts of said decedent have been paid; that all heirs of said decedent, as determined in accordance with Sections 11-14 of the Probate Act of the State of Illinois, are of legal age, and that persons in interest in said estate desire to settle the estate without administration.

(b) That decedent left a last will which was admitted to probate in the State of in the Court of County in proceedings numbered ; that a certified copy of said will is attached hereto; that no executor was named in said will (or the sole executor or executors named in said will died, failed or refused to qualify); that no tax is due to the United States, to the State of Illinois or to the state of the domicile of said decedent by reason of the death of said

decedent; that all claims against the estate of said decedent have been paid; that all heirs, as determined in accordance with Sections 11-14 of the Probate Act of the State of Illinois, and legatees of said decedent are of legal age, and that the persons in interest in said estate desire to settle the estate without administration.

[fol. 127] That from August 1, 1940, to March 31, 1942, said decedent was a gas customer of .....
(name of utility)

in the ..... of .....
(village, town or city)

County of ....., State of ....., at the addresses and during the periods, respectively, as follows:

..... from ..... to .....
Address

..... from ..... to .....
Address

..... from ..... to .....
Address

That said decedent, if living, would have been entitled, as an eligible customer, to a refund check issued by the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, drawn upon The First National Bank of Chicago, depositary of the funds held by the Clerk of said Court out of which refunds are to be made under and pursuant to the provisions of a decree of said Court entered September 3, 1942, in the cause entitled "Natural Gas Pipeline Company of America and Texoma Natural Gas Company vs. Federal Power Commission and Illinois Commerce Commission, No. 7454."

This affiant hereby represents to said The First National Bank of Chicago, to Tappan Gregory as officer for the United States Circuit Court of Appeals for the Seventh Circuit and to the Clerk of said Court that the following are the persons entitled to the personal property of said decedent under the laws of the State of Illinois:

Name	Relationship to Decedent	Age	Address
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

That affiant is the surviving .....
(relationship)
of said decedent and one of the persons in interest in said estate and represents that said refund check should be issued to ..... in accordance with the desires of all the persons interested in said estate.

That affiant has knowledge of the facts herein stated, that the same are true and that this affidavit is made to induce Tappan Gregory as officer for said Court, and the [fols. 128-129] Clerk of said Court to prepare, issue and mail or otherwise deliver, under and pursuant to the provisions of said decree entered September 3, 1942, of said Court, to said ..... a refund check or checks in the aggregate amount to which said decedent would be entitled as an eligible customer, if living.

—— ——, (Signature of Affiant).

Subscribed and sworn to before me this — day of ——, 194—. —— ——, Notary Public.

[fol. 130] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

v.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

ORDER OF DISTRIBUTION—January 22, 1943

Before Evans, Sparks, and Kerner, Circuit Judges.

The matter of the distribution of the funds deposited with this court, pursuant to the order of this court entered in the above entitled matter, coming on to be heard, and it appearing that we have heretofore separated $23,991.23 from the fund, which amount should be credited to what is termed the Nebraska City fund, over which there is a contest, and which is not now to be distributed,

And it further appearing that the time has now arrived when the court can and should direct the issuance of checks,

payable to the customers of the public utilities, against this fund,

And it further appearing that the total amount of expenses which have been necessarily incurred is, for the most part, fixed and definite, and this court having heretofore authorized Mr. Tappan Gregory, the agent of this court, to employ the services of persons or agencies selected by him to facili- [fol. 131] tate the refunding herein contemplated, and to include the expense so incurred in his estimate of the costs of making the refund and it being expressly provided that no utility so employed shall receive any compensation for such services beyond reimbursement for actual reasonable costs and expenses incurred by it and that such compensation is to be fixed by this court.

And it further appearing that certain expenses are definitely fixed and include such items as clerk's fees, a charge fixed by statute; the postage for two mailings to customers, blank check forms; stationery; advertisements or publications of notices of customers, all of which are approved.

And the court being desirous of distributing the funds available for distribution forthwith, and not being able at this time to determine and make findings upon the reasonableness and fairness of the items charged by the various utility companies for services and expenses,

It is ordered that from the fund deposited in this court, to-wit, $6,377,913.52, there shall first be deducted the sum of $23,991.23, known as the Nebraska City fund, and the further sum of $25,708.54, known as the Central States Electric Company fund, and for expenses, including estimated expenses and services by certain utilities, and which, adding all items to be deducted, is the sum of $404,134.91.

It is further ordered that checks be drawn on the First National Bank of Chicago, where the money is deposited, by the Clerk of this court under order of this court, for the amount to which each customer is entitled, based upon his [fol. 132] gas payments during the period covered by the overcharge, and the amount of the refund after deduction of the aforesaid sum of $404,134.91.

It is further ordered that this distribution shall not constitute an approval of the charges made by the various utilities for current estimate of refund expenses; that this court will, on hearing, fix the amounts which shall be allowed to the utilities who have rendered services or incurred expenses in making this refund. But, in order that the amount due

each customer may be determined and payment promptly made, the sum total of all deductions, including the Nebraska City item and the Central States Electric Company item, is $404,134.91.

It is further ordered that upon the payment of the checks by the First National Bank of Chicago to the refundees, Mr. Gregory shall immediately report to this court the number of customers who did not claim their refund and the total amount uncalled for, if any.

It is further ordered that the mailing of checks which are to be sent to the distributees shall begin on or before February 1, 1943.

It is further ordered that all refund checks bear the facsimile signature of the Clerk of this court in the following form:

Kenneth J. Carrick, Clerk of the U. S. Circuit Court of Appeals for the Seventh Circuit.

January 22, 1943.

Evan A. Evans, William M. Sparks, Otto Kerner, United States Circuit Judges.

[fol. 133] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents,

CENTRAL POWER COMPANY and CONSUMERS PUBLIC POWER DISTRICT, Intervenors

STIPULATION—Filed June 7, 1943

It is hereby stipulated by and between the Intervenors, Central Power Company and Consumers Public Power District, and the City of Nebraska City, a Municipal Corporation in Otoe County, Nebraska, that the issues presented by the original petition in intervention and the supplemental

petition in intervention of said Intervenors be settled, compromised and disposed of in the following manner:

1. That the Court be order, to be entered herein, direct the Clerk of said Court, or such other officer as may be designated by the Court to pay to the Intervenors and the City of Nebraska City from the fund heretofore segregated herein and designated as "City of Nebraska City Fund" in the amount of $23,991.23, as follows:

Intervenor Central Power Company	$3,002.30
Intervenor Consumers Public Power District	$4,405.75
Ethel Gaskill, City Clerk-Treasurer of the City of Nebraska City, Nebraska, to be disposed of as may be hereafter determined by the City Council of said City of Nebraska City, Nebraska, the said City Council being the regulatory body for rates of Public Utilities in the said City	$16,583.18

[fols. 134-135] 2. It is further stipulated and agreed between said intervenors and said City of Nebraska City that the proportionate share of expenses due the Clerk of said Court, if any, be deducted from the items above set forth to be paid to said respective parties.

3. It is further stipulated and agreed between the parties hereto that the said Intervenors waive all claim against said fund for expenses incurred by them and for attorneys fees.

4. It is further stipulated by and between the parties hereto, that the said Circuit Court of Appeals enter an order on this stipulation without further notice as to any of the parties hereto, said parties being the only interested parties in said fund.

5. This stipulation is made and entered into on behalf of the Intervenor Consumers Public Power District, by V. M. Johnson, Its General Manager, and by Lloyd E. Peterson, Its Attorney, and on behalf of said Intervenor Central Power Company, be Lloyd E. Peterson, Its Attorney, and on behalf of City of Nebraska City by the Mayor of said City whose signature is attested by the City Clerk, pursuant to resolution heretofore unanimously adopted by the Mayor and City Council of said City of Nebraska City, and approved as to sufficiency and form by John M. Dierks,

the duly appointed, qualified and acting City Attorney for said City of Nebraska City.

Dated at Nebraska City, Nebraska, this 17th day of May, 1943.

Central Power Company, Intervenor, by (Signed) Lloyd E. Peterson, Its Attorney. Consumers Public Power District, Intervenor, by (Signed) V. M. Johnson and by (Signed) Lloyd E. Peterson, Its Attorney-. City of Nebraska City, Nebraska, a Municipal Corporation, by (Signed) Wes Grail, Mayor.

Approved as to sufficiency and form on behalf of said City of Nebraska City, a Municipal Corporation.

(Signed) John M. Dierks, City Attorney of Nebraska City, Nebraska.

Attest: (Signed) Ethel Gaskief, City Clerk of Nebraska City, Nebraska.

[File endorsement omitted.]

[fol. 136] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents,

CENTRAL POWER COMPANY and CONSUMERS PUBLIC POWER DISTRICT, Intervenors

ORDER PURSUANT TO STIPULATION—June 7, 1943

On this 7th day of June, 1943, this cause came on for hearing upon the stipulation of the Intervenors Central Power Company and Consumers Public Power District and of the City of Nebraska City, a Municipal Corporation, in Otoe County, Nebraska, which said stipulation has heretofore been filed herein, and upon due consideration of the terms of said stipulation the Court finds that said stipulation should be allowed and confirmed by the Court.

It Is, Therefore, Considered, Ordered, Adjudged and Decreed by the Court that there be paid from the fund designated herein as "City of Nebraska City Fund" and to the following named parties, as follows, to-wit:

Central Power Company	$3,002.30
Consumers Public Power District	4,405.75
Ethel Gaskill, City Clerk-Treasurer of the City of Nebraska City, Nebraska	16,583.18

It Is Further, Considered, Ordered, Adjudged and Decreed by the Court that said amounts first have deducted therefrom the proportionate share of expenses due the clerk of this court; that parts II and III of the Supplemental Petition in Intervention of said Intervenors be and the same is hereby denied; and that the Intervenors be and hereby are denied allowances by this Court for expenses and attorneys' fees incurred by them herein.

[fols. 137-138] It Is Further Ordered by the Court that said disbursements be made forthwith by ——— ———, the officer of this Court having said fund in custody and control.

June 7, 1943.

By the Court, Evan A. Evans, William M. Sparks, Otto Kerner, Judges.

Approved for Entry:

Lloyd E. Peterson, Attorney for Intervenors, June 5, 1943.

John M. Dierks, Attorney for City of Nebraska City, Nebraska, June 5, 1943.

[fol. 139] In the United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Power Commission, Respondents

Motion for Leave to Intervene—Filed September 1, 1943

Now comes Central States Electric Company, by Perry M. Chadwick and Dayton Ogden, its attorneys, and moves the

court for leave to file its intervention herein, for the purpose of seeking payment to it of the so-called "Central States Electric Company Fund."

Perry M. Chadwick, Dayton Ogden, Attorneys for Central States Electric Company, an Iowa Corporation.

Chapman and Cutler, of Counsel.

[fols.-140-141] [File endorsement omitted.]

[fol. 142] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATULAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

PETITION IN INTERVENTION OF CENTRAL STATES ELECTRIC COMPANY—Filed September 1, 1943

The undersigned intervenor, Central States Electric Company, as grounds and reasons for payment to it of $25,708.54 now held by the Clerk of this Court, sometimes designated "Central States Electric Company Fund", respectfully shows:

1. Said sum of $25,708.54 is the portion of the refund made by Natural Gas Pipeline Company of America, allocated to this intervenor as the extent of the overcharge paid by it to Natural Gas Pipeline Company of America for gas purchased from the latter during the refund period heretofore fixed.

2. Intervenor is a corporation organized under the laws of the State of Iowa, incorporated April 10, 1915, and since then has been continuously engaged in the utility business in the State of Iowa and elsewhere.

3. Intervenor has not heretofore been a party to this cause or the proceedings before the Federal Power Com-

mission wherein this cause originated and has not heretofore participated, directly or indirectly therein.

[fol. 143] 4. Intervenor's utility operations in Iowa are not regulated or controlled by any state agency or commission. By law in Iowa each city and town has power to regulate and fix the rates for gas service in the municipality. In practice each municipality and the utility serving it negotiate on the matter of rates, rate classifications, and service, and the like, without any outside control or regulation. Throughout intervenor's many years of gas utility operations in Iowa reductions have been made from time to time in its rates and charges and in its rate classifications, nearly all of which were initiated or voluntarily proposed by intervenor. This policy of intervenor has proved to be sound and to be advantageous both to intervenor and to the communities it serves. The prosperity and well being of intervenor depend upon a large volume of sales at reasonable prices, rather than a limited volume at higher prices.

5. Because of the absence of any statewide control or regulation, no uniformity prevails in Iowa communities as to rates, rate classifications, or service regulations. Wide variations occur between different municipalities of comparable size and location in these respects.

6. The use of gas, either natural or artificial, is much less extensive throughout Iowa, and particularly in the moderate sized communities served by intervenor than in metropolitan areas. The number of customers, both domestic and otherwise, in ratio to population is very much smaller than generally prevails to the east of the territory served by intervenor. The investment of Iowa utilities in gas properties is much higher per customer than generally prevails. The consumers of gas in the territory include very few who use such service for industrial or large space heating purposes.

. Throughout the refund period and for some time prior thereto gas purchased by this intervenor from Natural Gas [fol. 144] Pipeline Company of America was distributed in four Iowa municipalities as follows:

(a) Muscatine, Iowa, population 18,286, with 2,432 gas customers. Such natural gas is distributed by Iowa Electric Company, which owns and operates the gas utility system in Muscatine, and which purchases the natural gas from this intervenor. Each of the sev-

eral contracts made by this intervenor to Natural Gas Pipeline Company of America for the purchase of natural gas expressly provided and contemplated that the gas, or a large portion thereof purchased by this intervenor, was intended to be re-sold by it to Iowa Electric Company for distribution by the latter in Muscatine. Sales of such gas by intervenor to Iowa Electric Company were made at the contract rates and without profit or advantage to the intervenor. More than 81% of the natural gas purchased by intervenor from Natural Gas Pipeline Company of America was thus re-sold to Iowa Electric Company and distributed by it in Muscatine.

Intervenor and said Iowa Electric Company are independent corporations having no direct corporate relationship, although each to some extent has the same personnel in charge of its management and operations. Facts and details herein related deal particularly with the larger operations at Muscatine rather than the smaller and scattered retail gas distributions by intervenor wholly on its own behalf.

Appended hereto, marked "Exhibit 1", is a counterpart of a letter addressed to intervenor by Iowa Electric Company, evidencing the latter's relinquishment of claim to said fund, or any part thereof, and consenting to the prosecution of this application by this intervenor.

(b) A portion of such purchased natural gas was distributed by intervenor over its own distribution system at Greenfield, Iowa, population 1,869, with 320 gas customers.

(c) The remainder of the gas purchased by intervenor was mixed with artificial gas produced by intervenor and retailed at Knoxville, Iowa, population 6,936, with 597 gas customers; and at Pella, Iowa, population 3,638, having 366 gas customers. The mixture of natural gas with artificial gas distributed by intervenor in these last two named communities contained less than 12½% of natural gas.

The statements as to population of the four municipalities mentioned in this paragraph are 1940 federal census figures as reported in the current Rand-McNally atlas. The number of gas customers in each are taken from the records of

intervenor and Iowa Electric Company as of December 31, 1941. Such numbers, both as to population and gas customers, were approximately the same throughout the entire refund period.

[fol. 145] 8. Natural gas was first furnished to intervenor by Natural Gas Pipeline Company of America late in 1932. It was realized from the outset that the greatly increased BTU content of natural gas required adjustment of all gas burners and appliances. Many such appliances required replacement, largely at the utility's expense. The inherent differences between natural gas and artificial gas, both as to the chemical composition and physical properties, were not at the time fully appreciated. After the conversion was accomplished, the excessive dryness of natural gas as compared with artificial gas brought in acute operating problems, principally the matter of leakage and metering difficulties. Loss of small quantities of gas by leakage from mains is a normal experience in the industry, and such leakage prior to the conversion of natural gas was within commonly recognized reasonable limits, not exceeding 10%. Since the introduction of natural gas, particularly at Muscatine, Iowa, such leakage has progressively increased so that during the refund period approximately 25% of the natural gas purchased was lost in this manner. The cause of this excessive leakage is the dryness of the natural gas which absorbed the natural residuum deposited by artificial gas in the mains and joints. In the metering equipment the diaphragms used in gas meters dried out to the extent that they required replacement. These conditions, particularly leakage, still prevail despite repairs and changes to the limit of the utility's resources, handicapped further in recent years by difficulty in obtaining requisite materials and labor.

9. Intervenor's earlier experience with natural gas soon demonstrated that the cost of the natural gas was excessive. Throughout the refund period such cost of natural gas was in excess of 48% of the total gas revenues of the larger distribution unit, Muscatine. This cost, at wholesale, was grossly excessive compared with other Iowa cities of com-[fol. 146] parable size and location. When other necessary expenses were added, including operation and maintenance charges, administrative overhead, depreciation, and the like, only a nominal balance remained as a return on the substantial investment in the property. Shortly after the

conversion of the properties to natural gas, intervenor made known to Natural Gas Pipeline Company of America its difficulties, and the unreasonable burden imposed by the rates specified in its initial gas purchase contract made in 1931. Thereafter several supplemental agreements were made, including a so-called "Boiler Fuel Gas Contract," dated August 25, 1936, a so-called "50¢ Gas Sales Contract," dated August 25, 1936, and a so-called "Industrial Processing Gas Contract," dated November 1, 1937. These supplemental agreements, however, were of a nature designed for metropolitan centers containing large individual users of gas and were of very little benefit or advantage to intervenor or to the Muscatine, Iowa operations, where costs until the recent readjustments remained excessively high.

10. In keeping with the policy of established utilities in Iowa voluntarily to reduce rates from time to time, new schedules of Muscatine, Iowa, have been frequently proposed for natural gas service. The first of these was on July 9, 1932. It generally prevailed until August, 1936, when a further reclassification and a rate reduction, save in the first bracket, was fixed. Subsequently to August, 1936, further changes and reductions were made from time to time and were approved by resolution of Muscatine City Council, but no official record of such latter changes can now be found until the current rate ordinance enacted February 4, 1943. Copies of the rate schedules in each of these three revisions are appended hereto, marked "Exhibit 2". Each was in substance as voluntarily proposed and offered, and each was enacted by ordinance of the City Council of Muscatine.

[fol. 147] 11. There is appended hereto a summary of the revenues and expenses of the Muscatine, Iowa, gas property, for the calendar years 1933 to 1941, inclusive, marked "Exhibit 3." The figures there shown are those used for the company's own accounting purposes and in the preparation of its federal income tax returns and reports to other governmental bodies. The net revenue throughout the refund period, after depreciation, is less than $6,000 per year.

The cost of the Muscatine gas property as of January 1, 1933, was	$523,895.91
Up to December 31, 1941, this cost plus additions to the properties during the period and minus depreciation and retirement charges was reduced to	361,610.18

The return on this amount, actually and necessarily invested in the property, was less than 2% per annum throughout the refund period and the entire period of natural gas operation up to the latest rate revisions made within the past year.

Intervenor submits that the facts herein related, which intervenor is prepared fully to establish by competent proofs, warrant and require the entry of an order directing payment by the Clerk of this Court to this intervenor of the so-called Central States Electric Company fund.

Central States Electric Company, Intervenor, by Percy M. Chadwick, Dayton Ogden, Its Attorneys.

Chapman and Cutler, of Counsel.

[fol. 148] *Duly sworn to by Frank A. Fratcher. Jurat omitted in printing.*

[fol. 149] EXHIBIT 1

Copy

Iowa Electric Company

General Office

Cedar Rapids, Iowa

August 28, 1943

Central States Electric Company, Cedar Rapids, Iowa.

GENTLEMEN:

Confirming the assurances heretofore expressed to you by the management of the undersigned, be advised that the undersigned has relinquished and waived any claim which the undersigned may have for payment to the undersigned by the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit of any part of the so-called natural gas refund moneys of which we understand some $25,000 has been at least nominally allocated to you.

The undersigned consents that you make application for the payment to you of such refund moneys, claiming the same in your own right. In your application you may freely use whatever pertinent or useful data may be afforded by

the accounting or other records of the undersigned, including gas utility property costs and values, operating figures, and rates and rate classifications.

The consent and relinquishment hereby confirmed has been in substance approved by the board of directors of the undersigned.

Yours very truly Iowa Electric Company, by
(Signed) Ray Ingham, Vice President.

[fol. 150] EXHIBIT 2

Summary of Gas Rates Prescribed by Ordinance in the City of Muscatine, Iowa, from 1932 to 1943

By ordinance passed, approved and adopted July 9, 1932—

For Domestic use:

	0 Cubic Feet per month	$.75
	100 Cubic Feet per month	.75
	200 Cubic Feet per month	.75
	300 Cubic Feet per month	.84
	400 Cubic Feet per month	1.12
	500 Cubic Feet per month	1.40
	600 Cubic Feet per month	1.68
	700 Cubic Feet per month	1.96
	800 Cubic Feet per month	2.24
	900 Cubic Feet per month	2.52
	1000 Cubic Feet per month	2.80
First	1500 Cubic Feet per month	2.80 per M.
Next	1500 Cubic Feet per month	2.55 per M.
Next	2000 Cubic Feet per month	2.36 per M.
Next	20000 Cubic Feet per month	2.19 per M.
Next	26500 Cubic Feet per month	1.92 per M.
	Balance	1.75 per M.

For Industrial use:

First	500 Cubic Feet per month	$3.33 per M.
Next	500 Cubic Feet per month	3.22 per M.
Next	1000 Cubic Feet per month	2.78 per M.
Next	8000 Cubic Feet per month	1.67 per M.
Next	10000 Cubic Feet per month	1.45 per M.
Next	30000 Cubic Feet per month	1.33 per M.
Next	50000 Cubic Feet per month	1.11 per M.
	Balance	.78 per M.

The minimum bill for industrial use per month shall be $15.00.

The rates to be charged for natural gas for space heating shall not be in excess of Eighty Three Cents (83¢) per thousand cubic feet with a minimum bill of Five Dollars ($5.00) per month for the months of October, November, December, January, February, and March.

Every consumer shall have the right to a discount from the above rates of ten per cent (10%) for prompt payment within ten days (10) after the bill is rendered.

The minimum bill shall be seventy-five cents (75¢) per month per meter for domestic use.

[fol. 151] By ordinance passed, approved and adopted August 6, 1936—

	0 Cubic Feet Per Month	$.75
	100 Cubic Feet Per Month	$.75
	200 Cubic Feet Per Month	.75
First	300 Cubic Feet Per Month	.75
Next	1200 Cubic Feet Per Month	2.25 per M.
Next	1500 Cubic Feet Per Month	1.50 per M.
Next	37000 Cubic Feet Per Month	.70 per M.
Next	160000 Cubic Feet Per Month	.60 per M.
Balance		.40 per M.

The rates to be charged for natural gas for space heating shall not be in excess of eighty-three cents (83¢) per thousand cubic feet, with a minimum bill of five dollars ($5.00) per month for the months of October, November, December, January, February and March.

All of the above rates and charges are net and the net bill shall be due and payable within ten (10) days after rendition. On all bills not paid within ten (10) days after rendition, the net amount shall be increased 10% on the first $10.00 and 2% on the balance, and the gross so determined shall be due and payable.

The minimum bill shall be seventy-five cents (75¢) per month per meter for domestic use.

The minimum bill for industrial use per month shall be fifteen dollars ($15.00).

By ordinance passed, approved and adopted February 4, 1943—

Residence Gas Service Rate:

The first 300 cubic feet or less used per month for $0.75.

The next 1,200 cubic feet used per month at $1.90 per MCF.

The next 1,500 cubic feet used per month at $1.20 per MCF.

The next 197,000 cubic feet used per month at $0.50 per MCF.

The balance cubic feet used per month at $0.40 per MCF.

Minimum monthly bill $0.75.

Commercial Gas Service Rate:

The first 300 cubic feet or less used per month for $0.75.

The next 1,200 cubic feet used per month at $2.00 per MCF.

The next 1,500 cubic feet used per month at $1.20 per MCF.

The next 37,000 cubic feet used per month at $0.60 per MCF.

The next 160,000 cubic feet used per month at $0.50 per MCF.

The balance cubic feet used per month at $0.40 per MCF.

Minimum monthly bill $0.75.

All of the above rates and charges are net and the net bills shall be due and payable within ten days after rendition. On all bills not paid within ten days after rendition, the net amount shall be increased 10% on the first $10.00 and 2% on the balance, and the gross bills so determined shall be due and payable.

(Here follows, 1 paster, folios 152-153)

152-153]

EXHIBIT 3

Iowa Electric Company

Summary of Gas Revenues and Expenses

Muscatine, Iowa

	1933	1934	1935	1936	1937	1938	1939	1940	1941
l Gas Revenue	$92,238.32	$97,741.46	$106,905.07	$112,374.31	$113,629.20	$106,962.08	$116,681.32	$121,658.85	$119,922.29
enses:									
(a) Cost of gas purchased	30,472.60	33,464.10	34,466.07	43,528.09	44,908.06	42,455.47	46,593.79	57,563.49	56,264.98
(b) Distribution service expense	28,650.61	28,636.29	23,010.76	27,612.94	23,828.08	22,187.91	23,033.06	23,899.48	23,707.29
(c) General Administrative including accounting, purchasing, sales, engineering, etc.	5,208.88	5,536.30	5,411.14	5,290.63	5,506.63	5,128.61	5,433.67	5,664.10	4,886.85
(d) Taxes	6,185.69	5,875.79	7,269.76	6,519.79	7,710.76	7,319.76	8,555.95	9,379.97	10,822.72
(e) Total expenses	$70,517.78	$73,512.48	$70,157.13	$82,951.45	$81,953.53	$77,091.75	$83,616.47	$96,507.04	$95,681.84
revenue before depreciation	$21,720.54	$24,228.98	$36,747.94	$29,422.86	$31,675.67	$29,870.33	$33,064.85	$25,151.81	$24,240.45
reciation and retirements (averge—See Note #1)	18,818.53	18,818.53	18,818.53	18,818.53	18,818.53	18,818.53	18,818.53	18,818.53	18,818.52
Revenue after depreciation	$2,902.01	$5,410.45	$17,929.41	$10,604.33	$12,857.14	$11,051.80	$14,246.32	$6,333.28	$5,421.93
rage Investment at end of each ar (actual cost to company plus ldditions minus retirements and deeciation, averaged—See Note #1 d #2)	$505,864.16	$487,832.41	$469,800.66	$451,768.91	$433,737.16	$415,705.41	$397,673.66	$379,641.91	$361,610.18
ent return on investment	0.6%	1.1%	3.8%	2.3%	3.0%	2.7%	3.6%	1.7%	1.5%

e #1: On property used or useful fixed rates of depreciation have prevailed throughout. The depreciation also includes retirements of equipment, etc., initially used in the manufacture of artificial gas and not required in the distribution of natural gas.

e #2: The actual cost to the company at the beginning of 1933 was $523,895.91. The average yearly additions amount to $786.78 and the average yearly retirements and depreciation amount to $18, 818.53.

[fol. 154] IN UNITED STATES CIRCUIT COURT OF APPEALS

7454

NATURAL GAS PIPELINE COMPANY OF AMERICA, Petitioners,

vs.

FEDERAL POWER COMMISSION, et al., Respondents

ORDER GRANTING LEAVE TO INTERVENE—September 1, 1943

On motion of counsel for Central States Electric Company, it is ordered that leave be granted to Central States Electric Company to file in this Court instanter its "Intervention" and also be granted leave to intervene in this cause.

[fol. 155] IN UNITED STATES CIRCUIT COURT OF APPEALS

7454

NATURAL GAS PIPELINE GAS COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

ORDER AS TO NOTICE OF APPLICATION FOR LEAVE TO INTERVENE —November 6, 1943

The application of Central States Electric Company for leave to intervene and to claim the $25,708.54, heretofore separated from the total fund deposited with this Court, and ordered to be separately dealt with, coming on to be heard, and the Court being advised in the premises and being of the opinion that parties should be notified of such application and given the opportunity to oppose it or consent to an order granting applicant's prayer for relief,

It is ordered that notice of such application be given to the Attorney General of the State of Iowa, to the municipality and the Mayor and the City Attorney of Muscatine, Iowa, and the municipality and the Mayor and City Attorney of Greenfield, Iowa, and to all customers of Central States Electric Company who received distribution of gas

from that company at Muscatine, Iowa or Greenfield, Iowa, between August 1, 1940 and March 31, 1942. Such notice shall be given by the Clerk who shall send by mail a copy of this order to each of the aforesaid parties except the customers of Central States Electric Company, and also by publiching a copy thereof three times in the Muscatine Journal, a newspaper published at Muscatine, Iowa, and in the Adair County Free Press, a newspaper published at Greenfield, Iowa.

It is further ordered that said respondents, the City of Muscatine, Iowa, the City of Greenfield, Iowa, and the customers of Central States Electric Company, on or before December 1, 1943, show cause, if any they have, why the relief sought by Central States Electric Company, should [fol. 156] not be granted.

It is further ordered that any of the parties herein named, may appear in writing instead of in person, and the Court will make such order for the date of hearing as may be just and fair to all parties.

By the Court:

——— ———, Clerk.

[fol. 157] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS COMMERCE COMMISSION, Respondents

CENTRAL STATES ELECTRIC COMPANY, Intervenor,

CITY OF MUSCATINE, IOWA, Respondent

RESISTANCE OF CITY OF MUSCATINE, IOWA, TO APPLICATION AND INTERVENTION OF CENTRAL STATES ELECTRIC COMPANY—Filed December 1, 1943

The undersigned respondent, City of Muscatine, Iowa, appearing for itself and in behalf of the customers of Iowa Electric Company, assignor of intervenor, Central States Electric Company, in said City of Muscatine, pursuant to

the order entered by the Court herein on November 6, 1943, in response to the intervention filed by said Central States Electric Company and as cause why the application of said intervenor should not be granted, respectfully shows to the Court:

1. That it is a municipal corporation organized under the laws of the State of Iowa and acting under special charter granted by the Legislature of said State, with full power and authority to grant franchises to individuals or private corporations for the construction, operation and maintenance of gas works and other utilities; that during the so-called "refund period", from August 1, 1940, to March 31, 1942, and both prior and subsequent thereto, the Iowa Electric Company, intervenor's assignor, was furnishing gas service to the citizens of the City of Muscatine, Iowa, [fol. 158] under a franchise granted to it, the rates for such gas service having been fixed by agreement with said Iowa Electric Company and approved by ordinance adopted by the City Council of this respondent from time to time during the existence of said franchise. Exhibit 2, attached to the petition of intervention of said Central States Electric Company, correctly states the gas rates as fixed by ordinances adopted at various dates between July 9, 1932, and February 4, 1943, but this respondent states that with the exception of minor changes in one or two specific rates, all negotiations for a change in gas rates to the consumers in the City of Muscatine were initiated by this respondent acting through its duly authorized officers, and that any substantial reductions in the rates at which such service was rendered to the citizens of Muscatine, were only made after prolonged negotiations initiated by this respondent and substantially no reduction in rates has ever been granted voluntarily by said utility to its customers in the City of Muscatine.

2. This respondent further states that it has not heretofore been made a party to this suit, nor was it advised by the representatives of the Iowa Electric Company at any time during the negotiations resulting in a modification of the rates charged to gas customers of said utility in the City of Muscatine, which were embodied in the ordinance adopted by the City Council of the City of Muscatine on February 4, 1943, that under the orders and decrees theretofore entered in this cause, the cost of the natural gas purchased

by it from the intervenor and resold by it to the residents of the City of Muscatine, had been sharply reduced, or that under the decree of this Court entered on September 3, 1942, the sum of $25,708.54 had been set apart as a refund to be paid to the customers of said gas utility in the City of Muscatine, Iowa, and the City of Greenfield, Iowa; that in [fol. 159] none of such negotiations did the representatives of said Iowa Electric Company, intervenor's assignor, present all of the facts involved to the officials of this respondent who were negotiating with it for a reduction of the gas rates to be paid by the citizens of Muscatine, and respondent therefore avers that said intervenor should not now be heard by this Court in its attempt to have diverted to it the fund which the Court has heretofore found should of right be repaid to the customers of said uti-ity to reimburse them for the excessive rates charged and collected by said Iowa Electric Company during the refund period.

3. Respondent further shows to the Court that it appears herein primarily in behalf of the gas customers served by the Iowa Electric Company, intervenor's assignor, in the City of Muscatine, for the reason that said customers consist of more than 2400 individuals, firms and corporations, whose names are unknown to this respondent, or to each other, and whose individual interests in said refund are quite small, and they are, therefore, unable to appear herein or to enter a resistance in their own behalf against the intervention and claim of said Central States Electric Company.

4. This respondent avers that so far as it is advised, none of said gas customers had any knowledge or information with respect to the pendency of this suit or the orders or decrees entered by the Court, providing for a reduction in the price to be paid by said intervenor to the petitioner Natural Gas Pipeline Company of America for gas purchased by it and resold to the Iowa Electric Company for sale and distribution to the residents of the City of Muscatine, nor of the provisions of the order and decree entered by the Court on September 3, 1943, providing for the refund of $25,708.54 to be repaid to such customers in the City of Muscatine and *and* to the gas customers of intervenor in the City of Greenfield, Iowa.

[fol. 160] 5. In response to the matters alleged by intervenor in paragraphs 8 and 9 of its intervention, this re-

spondent denies that the percentage of leakage from the mains of the distribution system owned by intervenor's assignor, Iowa Electric Company, in the City of Muscatine, Iowa, arising from the use of natural gas, as distinguished from water gas, is approximately 25% of the natural gas purchased; and while it is true that the percentage of natural gas lost by leakage in the mains is somewhat larger than in the case of water gas, the amount of such leakage is very much less than 25%; that it was well known to the intervenor and its assignor, before entering into the contract for the purchase of natural gas from the Natural Gas Pipeline Company of America, that there would be a larger percentage of leakage, since the said intervenor was by no means a pioneer in the distribution of natural gas to retain consumers, and records of the experience of other utilities in the distribution of such natural gas and the amount of leakage arising therefrom, for many years prior to the date of such contract, were available to intervenor's engineers. Moreover, respondent is informed and believes and so avers, that much of the leakage of which intervenor complains was the result of deterioration in its distribution system which had been in use for a long period of years before the contract for the use of natural gas was entered into; that said utility had at all times set up the necessary reserves for the depreciation of its distribution system and charged the same from year to year as part of the cost of operating said system in the City of Muscatine, so that any repairs or alterations which may have been necessary, as alleged by intervenor, to prevent such leakage, cannot now be asserted by it as ground for claiming the refund set apart by the Court for the benefit of the customers of intervenor's assignor.

[fol. 161] 6. In response to paragraph 11 of said intervention, this respondent denies that the net revenues earned by intervenor's assignor, the Iowa Electric Company, from its sales of gas to its customers in the City of Muscatine throughout the refund period was less than $6000.00 per year, and that the return on the depreciated value of the Muscatine gas property owned by said assignor, Iowa Electric Company, as set forth in paragraph 11, was less than 2% per annum throughout the refund period and the entire period of gas operation up to the last rate revisions made

within the past year; and it further specifically denies that Exhibit 3 attached to said intervention and purporting to be a summary of gas revenues and expenses of Iowa Electric Company at Muscatine, Iowa, for the years 1933 to 1942 inclusive, is a true and correct statement of such revenues and expenses, or that the "net revenue after depreciation" and the "per cent return on investment" for each year, as set forth in said summary, correctly reflects the actual net return received by said Iowa Electric Company from the operation of its distribution system in the City of Muscatine, and further denies that the item of distribution service expense shown in said summary for each of said years is correct, but avers the fact to be that the distribution service expense properly chargeable to the operation of said Muscatine gas property is far less than the figures stated in said summary and that when said figures, as well as other items of expenses set forth in said summary, are corrected to show the actual cost of operating the Muscatine gas property the net revenue therefrom will in each of said years be far in excess of the amount shown in said summary.

[fol. 162] 7. This respondent denies that the matters alleged in the petition of intervention filed herein by the said Central States Electric Company as assignee of the Iowa Electric Company, insofar as the same relate to the operation of the Muscatine gas property and the rates charged to customers thereof in the City of Muscatine, are material or competent to support its claim for payment to it of the refund set apart under the decree of this Court for payment to the customers of said intervenor in the City of Muscatine and the City of Greenfield, Iowa, and that the showing made in said petition of intervention is wholly insufficient to justify the Court in setting aside the orders and decrees heretofore entered by it in this cause with respect to said fund.

8. This respondent states that the intervention of said Central States Electric Company and its claim for the payment to it of the refund in question, are based in general upon its assertion that, (a) there is excessive leakage of natural gas from its mains resulting in a higher cost of the gas actually sold, and (b) the alleged inadequate net return upon the capital invested in its Muscatine gas property, and in *in* support of the second proposition it attaches to its petition Exhibit 3 alleged to be a summary of gas revenues

and expenses in the operation of the Muscatine, Iowa, property from 1933 to 1941 inclusive. As heretofore stated, this respondent and the customers of said intervenor and its assignor, Iowa Electric Company, in the City of Muscatine, have not been parties to this litigation and have not been advised as to the claim made by the Central States Electric Company until the service upon its mayor and city attorney of the copy of the order entered by this Court on November 6, 1943, requiring respondent and the customers of said intervenor to show cause on or before December 1, 1943, why [fol. 163] the relief sought by said Central States Electric Company should be granted. It is self evident that the contentions of the intervenor present many very technical propositions which will require expert research to meet and this respondent has not had the opportunity, since the service of notice of said intervention upon it, to make the necessary investigations which would enable it to properly present the defense of the customers of said intervenor and its assignor, to said petition of intervention and claim, and that to do so will require a considerable amount of time, and not less than sixty days from December 1, 1943.

Wherefore this respondent respectfully prays that this Court may grant respondent additional time within which to prepare a proper showing to meet the intervention and claim of said Central States Electric Company and submit the same to this Court, and that upon final hearing said petition of intervention and application for the payment of said fund to said Central States Electric Company be denied and said intervention dismissed.

City of Muscatine, Iowa, by R. E. Dunker, Mayor.

[fol. 164] *Duly sworn to by R. E. Dunker. Jurat omitted in printing.*

[fol. 164a] [File endorsement omitted]

[fol. 165] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

[Title omitted]

AFFIDAVIT OF SERVICE—Filed December 1, 1943

STATE OF IOWA,
Muscatine County, ss:

I, Matthew Westrate, being first duly sworn, on oath state that I am City Attorney of the City of Muscatine, Iowa, respondent to the Petition of intervention filed in the above entitled cause by Central States Electric Company; that on the 29th day of November, 1943, I mailed a copy of the Resistance of the City of Muscatine to Application and Intervention of Central States Electric Company to Mr. Dayton Ogden, one of the attorneys of record for Central States Electric Company, Intervenor, at No. 111 West Monroe Street, in the City of Chicago, Illinois.

(Signed) Matthew Westrate.

Subscribed and sworn to before me by the said Matthew Westrate this 29th day of November, 1943. (Signed) Mary Prosser, Notray Public, Muscatine County, Iowa. (Seal.)

[File endorsement omitted.]

[fol. 166] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

RESISTANCE OF NATURAL GAS USERS OF THE TOWN OF GREENFIELD TO INTERVENTION—Filed December 1, 1943

Comes now, Elmer E. Johnson and for himself and for the Natural Gas Users of the town of Greenfield, Adair

County, Iowa, and respectfully states to the court in resistance of the petition of intervention filed by Central States Electric Company:

1. That he is at this time Mayor of the town of Greenfield; that he is also at this time and was during the period covered by the above entitled action a user of natural gas sold by the Central States Electric Company in the town of Greenfield and he makes this resistance for himself and for the other users of said gas in said town of Greenfield.

2. That the original findings of fact and conclusions of law and decree filed in the above title cause of action in the October term for 1941 show in said decree by the court and that the various ultimate users and not the utilities are entitled to said money.

3. That said utilities among which is the Central States Electric Company bought said gas of the Natural Gas Pipeline Company, petitioners, in this action and knew when they bought it what it would cost them; that they then sold gas to their customers, the ultimate users, in the town of Greenfield at a rate that they thought would pay them the profit that they were entitled to, that they have received all the pay for said gas that they intended to get when they sold it; that they paid more for said gas than they should, have already collected for same from the ultimate consumers and any rebate now due should belong to the ultimate consumers of said gas.

[fol. 167] Wherefore he asks for himself and for the other ultimate consumers of said gas as defined in said decree be declared the owners of said funds; that the court redirect distribution of said funds as originally ordered in said decree; that the petition of intervention of Central States Electric Company be dismissed at their costs; and for all else in said matter as to the court appears just and proper.

Elmer E. Johnson, for Himself. Elmer E. Johnson, for Gas Users of Town of Greenfield, Iowa.

Duly sworn to by Elmer E. Johnson. Jurat omitted in printing.

[fol. 168] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

[Title omitted]

AFFIDAVIT OF SERVICE—Filed December 7, 1943

STATE OF IOWA,
Adair County, ss.

I, Elmer E. Johnson, being first duly sworn, depose and say that on the 3rd day of December, 1943, I did place in the mails of Greenfield, Iowa, a letter with sufficient postage attached, in which letter was contained a copy of the Resistance filed by me for myself and for the other users of Natural Gas in the Town of Greenfield, Iowa, to the Petition of Intervention filed in the above entitled cause of action by the Central States Electric Company; that said letter was addressed to Mr. Dayton Ogden, Attorney at Law, 111 W. Monroe Street, Chicago, Illinois Resistance was filed by me in said Cause of Action on December 1, 1943.

(Signed) Elmer E. Johnson.

Subscribed and sworn to before me this 4th day of December, 1943. (Signed) A. L. Murphy, Clerk District Court of Adair County, Iowa, by Blanche L. Fagan, Deputy. (Seal.)

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

* * * * * * *

AFFIDAVIT RE PROOF OF PUBLICATION—Filed December 7, 1943

STATE OF IOWA,
Adair County, ss.

[fol. 169] I, K. H. Sidey, being first duly sworn, on oath depose and say that I am the editor and publisher of the Adair County Free Press, a weekly newspaper of general circulation in said county, and regularly printed and published in the English language at Greenfield, Adair County,

Iowa; that the annexed Intervention Order Notice was printed and published, once each week in said newspaper for 3 consecutive weeks, and that the first of said publications was on November 11, 1943, the second on November 18, 1943, and the third on November 25, 1943.

(Signed) K. H. Sidey.

Subscribed in my presence and sworn to before me by the said K. H. Sidey on this 2nd. day of December A. D., 1943. (Signed) A. L. Murphy, Clerk Dist. Court in and for Adair County, Iowa, by Blanche L. Fagan, Deputy. (Seal.)

Printers Fee $16.00.
Copy of the Order of November 6th, 1943, attached.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

* * * * * * *

AFFIDAVIT RE PROOF OF PUBLICATION—Filed December 7, 1943

C. Lloyd Bunker, Business Manager of the Muscatine Journal and News-Tribune, a newspaper printed and published at Muscatine, Muscatine County, Iowa, being first duly sworn, says that Notice in the case of Natural Gas Pipeline Co. of America and Texoma Natural Gas Co. vs. Federal Power Commission and Illinois Commerce Commission of which annexed printed slip is a true, correct and complete copy, was published in said The Muscatine Journal and News-Tribune once each week for Three weeks in succession, the first publication having been made there-in on November 8, 1943, the second on November 15, 1943, and the third on November 22, 1943.

(Signed) Lloyd Bunker.

Subscribed in my presence and sworn to before me by the said C. Lloyd Bunker this 23rd. day of November, 1943. (Signed) Edith M. Garnes, Notary Public in and for Muscatine County, Iowa. (Seal.)

Copy of Order of November 6, 1943, attached.

[File endorsement omitted.]

[fol. 170] In United States Circuit Court of Appeals

* * * * * * *

7454

Natural Gas Pipeline Company of America, et al., Petitioners,

vs.

Federal Power Commission, et al., Respondents

Order of Commission—February 3, 1944

Now this day this cause come on to be heard on the Intervention Petition of Central States Electric Company, and on oral argument by Mr. Dayton Ogden, counsel for Central States Electric Company, and by Mr. Matthew Westrate, City Attorney of Muscatine, Iowa, and the Court takes this matter under advisement.

* * * * * * *

[fol. 171] In the United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Commerce Commission, Respondents

Central States Electric Company, Intervenor,

City of Muscatine, Iowa, Respondent

Amendment to Resistance of City of Muscatine, Iowa, to Application and Intervention of Central States Electric Company—Filed February 14, 1944

Comes now the respondent, City of Muscatine, Iowa, and with leave of Court amends its resistance to the application and intervention of Central States Electric Company heretofore filed in this cause, by adding thereto the following grounds, to-wit:

9. This respondent avers that the matters alleged in the intervention filed herein by said Central States Electric

Company as reasons why the fund in question should be paid to it, instead of being distributed to the gas customers of the utility in the cities of Muscatine, Iowa, and Greenfield, Iowa, as provided by the decree of this Court, are wholly incompetent, immaterial and irrelevant in this suit, and in effect, constitute an attempt by intervenor to have this Court adjudicate the validity of the gas rates in effect in the City of Muscatine during the "refund period" and for some years prior thereto; that it affirmatively appears from said intervention that the schedule of gas rates in effect in the City of Muscatine during the so-called "refund [fol. 172] period" as fixed by ordinances of the City of Muscatine, Iowa, were adopted by agreement between the City Council of said City of Muscatine and the Iowa Electric Company, assignor of said Central States Electric Company, which agreement was freely and voluntarily entered into by and between the parties. That the said Iowa Electric Company, as the operating gas utility in the City of Muscatine, and the City Council of the City of Muscatine, Iowa, were duly competent and qualified under the law, to enter into a voluntary agreement with respect to the gas rates to be paid by the citizens of Muscatine, and no objections to the sufficiency or adequacy of said rates to produce a fair return upon its investment or rate base was ever made by said utility after the adoption thereof, but on the contrary, as averred in said petition of intervention, the utility voluntarily reduced its gas rates in Muscatine from time to time between the years 1932 and 1943, during which period it was distributing natural gas purchased from The Natural Gas Pipeline Company of America to its customers in Muscatine, and by reason thereof, intervenor is estopped and cannot now be heard to claim that said gas rate schedules were inadequate or insufficient to produce a fair return upon its rate base.

10. This respondent further avers that the allegations contained in said petition of intervention do not set forth any valid or material ground or cause for which this Court should modify its decree entered herein on September 3, 1942, providing for the distribution of the fund in question to the customers of the gas utilities in the cities of Muscatine, Iowa, and Greenfield, Iowa, and that a consideration thereof by this Court for the purpose urged by intervenor

would involve jurisdictional questions and matters wholly immaterial and irrelevant under the terms of said decree.

[fol. 173] Wherefore, respondent prays as in its original Resistance filed herein, and that on final hearing said petition of intervention and application for the payment of said fund to said Central States Electric Company be denied and said intervention dismissed.

City of Muscatine, Iowa, by R. E. Dunker, Mayor,
Matthew Westrate, Attorney.

Duly sworn to by R. E. Dunker. Jurat omitted in printing.

[fol. 174] [File endorsement omitted.]

[fol. 175] In the United States Circuit Court of Appeals

[Title omitted]

Affidavit of Service.—Filed February 14, 1944

State of Iowa,
Muscatine County: SS:

I, Matthew Westrate, being first duly sworn, on oath state that I am City Attorney of the City of Muscatine, Iowa, respondent to the petition of intervention filed in the above entitled cause be Central States Electric Company; that on the 11th day of February, 1944, I mailed a copy of the Amendment to Resistance of the City of Muscatine, Iowa, to the application and intervention of Central States Electric Company, by registered mail, to Mr. Dayton Ogden, one of the attorneys of record for Central States Electric Company, intervenor, in care of Chapman & Cutler, at 111 West Monroe Street, in the City of Chicago, Illinois.

(Signed) Matthew Westrate.

Subscribed and sworn to before me by the said Matthew Westrate this 11th day of February, 1944.

(Signed) Mary Prosser, Notary Public, Muscatine County, Iowa. (Seal.)

[File endorsement omitted.]

[fols. 176-177] In United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Power Commission, Respondents

Order Denying Petition of Intervenor—February 14, 1944

Before Evans, Sparks and Kerner, Circuit Judges:

The petition of intervenor, Central States Electric Company, for an order directing the Clerk of this Court to pay to it, the Central States Electric Company, the sum of $25,708.54 coming on to be heard and the Court having given consideration to said petition, and it appearing that petitioner bases its prayer for relief on the ground that its gas rates are, and have been inadequate, and the reasonableness of petitioner's rates being a matter beyond the jurisdiction of this Court, and this Court having previously ruled that the refund made by National Gas Pipeline Company of America and Texoma Natural Gas Company belonged to the consumers of gas supplied by customers of said Natural Gas Pipeline Company of America and Texoma Natural Gas Company, and the Court deeming it is advisable in the premises, It is ordered, adjudged and decreed that the petition of the said intervenor, Central States Electric Company, be, and the same is hereby denied.

It is further ordered that this denial of intervenor's petition is without prejudice to its making claim of adjustment with the cities of Muscatine, Greenfield, Knoxville and Pella, all of the State of Iowa, or with the consumers of gas furnished by it in said cities.

[fol. 178] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

ORDER DIRECTING PAYMENT OF CENTRAL STATES ELECTRIC CO. FUND TO CITY TREASURERS—February 14, 1944

Before EVANS, SPARKS, and KERNER, Circuit Judges.

The above entitled matter coming on to be heard and the parties being unable to stipulate or agree upon the facts or upon the rights of the parties,

And it appearing that the Natural Gas Pipeline Company of America and the Texoma Natural Gas Company have heretofore paid into this Court the sum of $6,377,913.52, which has been in part distributed by the Clerk of the Court to the consumers of gas in the State of Illinois who are entitled to receive said refund;

And it appearing that a part of said refund belongs to the consumers of gas residing in the Cities of Muscatine, Greenfield, and Knoxville, and Pella, all of the State of Iowa; and it appearing that the total amount which belongs to said consumers in said cities of the State of Iowa is $25,708.54,

And there being no state commission in the State of Iowa, and the Central States Electric Company has heretofore filed a petition to intervene and to secure an order from this Court directing said moneys to be paid to it, and that said petition has been by this Court denied, but without prejudice to said Central States Electric Company's making claim for said moneys in the hands of the City Treasurers of the said cities, to which this money is to be paid;

And the Court being desirous of paying, at the earliest possible date, to such parties as are entitled to the same, and to permit of a determination of said rights by a Court or body having jurisdiction thereof, and deeming itself [fol. 179] duly advised in the premises,

It is ordered that the Clerk of this Court pay to the City Treasurer of the City of Muscatine the sum of $20,823.

It is further ordered that the Clerk pay to the City Treasurer of the City of Greenfield, the sum of $1,221.

It is furthered ordered that the Clerk pay to the City Treasurer of the City of Knoxville the sum of $2,260.

It is furthered ordered that the clerk pay to the City of Pella, Iowa, the sum of $1,403.

It is furthered ordered that the Clerk serve a copy of this order promptly upon the City Treasurers of said Cities of Muscatine, Greenfield, Knoxville, and Pella, and also on the Central States Electric Company and the Natural Gas Pipeline Company and the Texoma Natural Gas Company, and upon such representatives of said cities as have appeared, and that said service shall be by mailing a copy of the order to each of said parties.

It is further ordered that said payments by the Clerk shall not be made until thirty days from the date of such service, unless said Cities and said Central States Electric Company, in writing, consent to an immediate payment of said money to said City Treasurers.

It is further ordered that in case an appeal shall be taken from this order within thirty days that the Clerk of this Court is directed to suspend payment until the further order of this Court.

Dated: February 14, 1944.

Evan A. Evans, William M. Sparks, Otto Kerner, Circuit Judges.

[fol. 180] In United States Circuit Court of Appeals

Letter—Filed February 18, 1944

Chapman and Cutler

111 West Monroe Street

Chicago, 3, Illinois

February 17, 1944.

Clerk of the United States Circuit Court of Appeals for the 7th Circuit, 1212 Lake Shore Drive, Chicago, 10, Illinois.

Dear Sir:

Re: Natural Gas Pipeline Company of America, et al., v. Federal Power Commission, et al., Cause No. 7454

On behalf of Mr. Dayton Ogden, who is presently in California, we hereby acknowledge receipt of copies of two orders entered in the above entitled cause on December 14, 1944.

Our client, Central States Electric Company, is unwilling to consent to payment of the funds to the City Treasurers of the municipalities involved at this time, inasmuch as there has not been sufficient opportunity as yet to investigate the entire matter.

Yours very truly, (Signed) Chapman and Cutler.

[File endorsement omitted.]

[fol. 181] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

MOTION OF CENTRAL STATES ELECTRIC COMPANY FOR LEAVE TO FILE ITS SUPPLEMENTAL PETITION AND FOR A STAY OF A CERTAIN ORDER ENTERED HEREIN ON FEBRUARY 14, 1944—Filed March 11, 1944

Comes now *Central States Electric Company* and moves the Court for the entry of an order providing as follows:

1. Granting leave to Central States Electric Company to file herein instanter its Supplemental Petition which is attached hereto.

2. Staying the order entered herein on February 14, 1944 (which, among other things, directs the Clerk of this Court, as more fully set forth in said order, to pay to the Treasurers of the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, the sum of $25,708.54) until the Court rules on said Supplemental Petition, and in the event the prayer of said petition is denied then staying said order for a period of thirty days from and after the date of the order of denial.

Central States Electric Company, by Perry M. Chadwick, Dayton Ogden, Its Attorneys, 111 West Monroe Street, Chicago, Illinois, Randolph 6130.

[fol. 182] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

SUPPLEMENTAL PETITION OF CENTRAL STATES ELECTRIC COMPANY—Filed March 28, 1944

Comes now *Central States Electric Company* and for a supplement to its intervening petition filed herein on September 1, 1943, and as additional grounds and reasons for payment to it of the sum of $25,708.54 now held by the Clerk of this Court respectfully represents as follows:

1. On August 30, 1940, this Court entered an order in its Cause No. 7439, entitled "Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners, vs. Federal Power Commission and Illinois Commerce Commission, Respondents," staying the order of the Federal Power Commission dated July 23, 1940, which directed Natural Gas Pipeline Company of America to file new schedules of rates and charges to reflect a reduction of not less than $3,750,000 per annum in its operating revenues, and in and by said order it is provided, among other things, as follows:

> "That this order will become effective upon the execution and delivery to the Clerk of this Court by petitioners of their joint and several bond in the penal sum of $1,000,000 *conditioned on their refunding to those who purchase natural gas from petitioners at wholesale* as their several interests appear, the amount represented by the reduction in revenues as directed by the Federal Power Commission in its order dated July 23, 1940, if the order last mentioned be sustained."

[fol. 183] Pursuant to the aforesaid order entered by this Court on August 30, 1940, and pursuant to orders entered in the above entitled cause on November 1, 1940, and November 26, 1940, Natural Gas Pipeline Company of America

and Texoma Natural Gas Company on December 3, 1940, filed herein their bond whereby they bound themselves to the Federal Power Commission and the Illinois Commerce Commission in the penal sum of $1,000,000, the condition of which bond is as follows:

> "*The condition of this obligation is such that if the undersigned shall pay or cause to be paid to the purchasers at wholesale of natural gas from Natural Gas Pipeline Company of America* as their several interests appear the amounts representing the reduction in the gross revenues of Natural Gas Pipeline Company of America which shall have accrued pending judicial review of the order of the Federal Power Commission dated July 23, 1940, directing the undersigned, Natural Gas Pipeline Company of America, to file new schedules of rates and charges to reflect a reduction of not less than $3,750,000 per annum in the operating revenues of said Natural Gas Pipeline Company of America together with all costs which may be adjudged against them should said order last mentioned be sustained, then this obligation shall become null and void and of no further force and effect."

The aforesaid bond was approved by an order entered in the above entitled cause on December 3, 1940. Thus it appears from the aforesaid orders entered by this Court and from the condition of said bond that the same was executed and filed with this Court for the benefit of the purchasers at wholesale (including your petitioner) of natural gas from Natural Gas Pipeline Company of America during the period while the order of the Federal Power Commission, dated July 23, 1940, was stayed by order of this Court.

2. On March 16, 1942, the Supreme Court of the United States sustained the said order of the Federal Power Commission dated July 23, 1940. As a result thereof and pursuant to the aforesaid bond, Natural Gas Pipeline Company of America and Texoma Natural Gas Company deposited with the Clerk of this Court the sum of $6,377,913.52, repre- [fol. 184] senting the amount paid, during the stay of said order of the Federal Power Commission, to Natural Gas Pipeline Company of America by purchasers of natural gas at wholesale (including your petitioner) from Natural Gas Pipeline Company of America during this period. This

Court in and by its order entered on September 3, 1942, allocated from the aforesaid sum of $6,377,913.52 the sum of $25,708.54 as representing the amount paid by your petitioner to Natural Gas Pipeline Company of America for natural gas purchased by it at wholesale during said period. Your petitioner did in fact purchase natural gas at wholesale during said period from Natural Gas Pipeline Company of America and paid therefor at the rates prevailing while the said order of the Federal Power Commission was stayed by order of this Court, and therefore said sum of $25,708.54 represents moneys paid by your petitioner to Natural Gas Pipeline Company of America in excess of the rates fixed by the Federal Power Commission in its order dated July 23, 1940, and refunded according to the condition of said bond for the use and benefit of your petitioner.

3. Your petitioner is the only party in interest in said sum of $25,708.54 who is in privity with Natural Gas Pipeline Company of America under the contracts or scheduled rates which gave rise to such sum and, therefore, your petitioner is the only party entitled to repayment thereof.

4. A refund of said sum of $25,708.54 to the ultimate consumers of the natural gas purchased by your petitioner from Natural Gas Pipeline Company of America during the aforesaid period or to the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, as the so-called representatives of such consumers would in fact result in a reduction of rates during said period between such consumers or their representatives and the retailer of natural gas to them. [fol. 185] The Natural Gas Act expressly provides that it only "shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural gas companies engaged in such transportation or sale, *but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution* or to the production or gathering of natural gas." Under this provision the Federal Power Commission is without jurisdiction to determine rates between the ultimate consumers of natural gas and their local distributor. It therefore must follow that this Court is without jurisdiction to determine any question or dispute between your petitioner and the ultimate con-

sumers of the gas purchased by it from Natural Gas Pipeline Company of America which would effect a reduction of the rates paid by such consumers for such gas.

5. The purpose of the Natural Gas Act is to regulate rates between the interstate carrier of natural gas and the wholesale purchaser of such gas, and the Act evidences a clear intention that overpayments resulting from rates found to be excessive by the Federal Power Commission shall be refunded to the party who paid the same. Thus it is provided in Section 717c(e) of the Act that when a new schedule of increased rates or charges is filed by a natural gas company and the same are made effective by an interim order of the Commission, nevertheless "the Commission may, by order, require the natural gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, *specifying by whom and in whose behalf such amounts were paid*, and, [fol. 186] upon completion of the hearing and decision, to order such natural gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified." Clearly this provision contemplates that overpayments on account of excessive rates shall be repaid to the purchaser from the natural gas company. There is no distinction in principle in the situation of your petitioner before this Court and that which is expressly covered by the foregoing provision of the Act, and your petitioner therefore is entitled to repayment of said sum of $25,708.54.

6. The Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, are without statutory power or authority to represent in these proceedings the ultimate consumers of gas purchased by your petitioner from Natural Gas Pipeline Company of America during the aforesaid period, or to receive payment of said sum of $25,708.54, or to administer or distribute said sum in any manner whatsoever. Even if it should be finally determined that such ultimate consumers are entitled to said sum and if the administration and disposition thereof is entrusted to the respective Treasurers of said municipalities they, to the extent that ultimate consumers do not make a claim to said sum, will enjoy a windfall without any claim or right thereto whatsoever, and it has been recognized by this Court in these proceedings that by

reason of death, absence in the military service, etc., that a substantial number of the ultimate consumers will not make claims for their respective portions of said sum. Also, to the extent that a portion of said sum of $25,708.54 represents payments made by your petitioner to Natural Gas Pipeline Company of America for natural gas which escaped from your petitioner's gas mains and was therefore lost, the ultimate consumers or said municipalities will enjoy a windfall at the expense of your petitioner if said sum is [fol. 187] paid to either of them.

7. This Court in its order entered on February 14, 1944, denying the prayer of your petitioner's original petition made the finding as follows:

> "* * * this Court having previously ruled that the refund made by Natural Gas Pipeline Company of America and Texoma Natural Gas Company belonged to the consumers of gas supplied by customers of said Natural Gas Pipeline Company of America and Texoma Natural Gas Company, * * *."

The ruling referred to in this finding was based on a disclaimer of interest in such refund filed herein on or about June 2, 1944, by all of the local distributors of gas in the Chicago area and therefore is not a guiding precedent or a decision which affects your petitioner in any way. Furthermore, this Court, by various orders heretofore entered herein, has directed that said sum of $25,708.54 (therein designated as the "Central States Electric Company Fund") should be segregated and separately dealt with.

8. This Court in its order entered on February 14, 1944, directing that said sum of $25,708.54 be paid by the Clerk of this Court to the respective Treasurers of the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, in the amounts therein set forth, made the finding as follows:

> "And it appearing that a part of said refund belongs to the consumers of gas residing in the Cities of Muscatine, Greenfield, and Knoxville, and Pella, all of the State of Iowa; and it appearing that the total amount which belongs to said consumers in said cities of the State of Iowa is $25,708.54."

This finding is necessarily based on the conclusion that the excessive rates paid by your petitioner to Natural Gas

Pipeline Company of America are reflected in the rates paid by the ultimate consumers to your petitioner. So far as your petitioner is concerned, there is no evidence before this [fol. 188] Court upon which this Court could properly base any such conclusion or finding. On the contrary, your petitioner's original petition for intervention herein alleges facts (which your petitioner had no opportunity to substantiate by evidence before this Court) establishing that the rates paid by the ultimate consumers to your petitioner do not reflect the excessive rates paid by your petitioner to Natural Gas Pipeline Company of America. In this connection, the original petition alleges that the rates paid by the ultimate consumers to your petitioner were insufficient to provide a fair return on your petitioner's investment and that your petitioner voluntarily induced the making of such rates in order to meet competitive conditions and to increase its volume of business. This Court denied the relief sought in said original petition on the ground that the same required a determination of local rates which was a matter beyond its jurisdiction. If this is true, then it would appear that it is also beyond the jurisdiction of this Court to arrive at the conclusion that the rates paid by the ultimate consumers reflect the excessive rates paid by your petitioner to Natural Gas Pipeline Company of America. Consequently it must follow that under the Natural Gas Act this Court is without jurisdiction to award said sum of $25,708.54 to any party to these proceedings other than your petitioner. Furthermore, since your petitioner did not during the aforesaid period obtain a fair return on its investment due substantially to excessive rates paid by it to Natural Gas Pipeline Company of America, equity would be served by payment of said sum of $25,708.54 to your petitioner rather than by payment thereof to the ultimate consumers.

Wherefore your petitioner prays for the entry of an order herein granting leave to your petitioner to file herein in- [fol. 189] stanter this its Supplemental Petition and directing payment of said sum of $25,708.54 to your petitioner.

Central States Electric Company, by Perry M. Chadwick, Dayton Ogden, Its Attorneys, 111 West Monroe Street, Chicago, Illinois, Randolph 6130.

[fols. 190-191] [File endorsement omitted.]

[fol. 192] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

RESISTANCE OF CITY OF MUSCATINE, IOWA, TO MOTION OF CENTRAL STATES ELECTRIC COMPANY FOR LEAVE TO FILE SUPPLEMENTAL PETITION, AND FOR STAY OF ORDER ENTERED FEBRUARY 14, 1944—Filed March 17, 1944

Comes now the respondent, City of Muscatine, Iowa, and resists the motion of Central States Electric Company for leave to file its supplemental petition and for a stay of a certain order entered herein on February 14, 1944, and as grounds for such resistance respectfully states and shows to the Court:

1. On September 3, 1942, this Court entered in this cause its Findings of Fact and Conclusions of Law and Decree, wherein and whereby the Court found that the fund amounting to $6,377,913.52, less the clerk's statutory fee of one per cent and costs and expenses of distribution, belonged to the eligible ultimate consumers of the several utilities involved, and should be so distributed; and that none of the utilities is entitled to such funds. Included in said sum is the sum of $25,708.54 allocated to the said Central States Electric Company for distribution to its customers, or the customers of its assignor, Iowa Electric Company, in the cities of Muscatine, Greenfield, Knoxville and Pella, all in the State of Iowa; that the said Central States Electric Company was a party to this proceeding and was fully advised of the provisions of said decree from and after the rendition thereof; that no appeal from said findings and decree has ever been taken by said Central States Electric [fol. 193] Company, and the same is now a verity as to all matters contained therein relating to the said fund, insofar as the said Central States Electric Company is concerned, and said company is bound thereby and cannot now be heard to question or controvert the terms and provisions of said

decree with respect to the distribution of said fund to the ultimate consumers of the gas, for whose benefit these proceedings were instituted.

2. That the Supplemental Petition attached to said motion, and now sought to be filed herein by said Central States Electric Company, is an attempt to reopen these proceedings and to secure a re-adjudication by this Court of matters which were fully and finally determined by it in the decree entered on September 3, 1942; that said petitioner was a party to, and is bound by each and all of the terms and provisions of said decree with respect to the distribution of the fund in question, and said petitioner should not now be heard to question said findings and decree of this Court.

3. That at the date of the entry of said findings of fact and conclusions of law and decree, on September 3, 1942, this Court had full jurisdiction of the parties and subject matter dealt with in said decree, and the said Central States Electric Company, being then a party to this proceeding and within the jurisdiction of the Court in this cause, cannot now be heard to question such jurisdiction or to attack the right of the Court to order distribution of the fund in question to the ultimate consumers of the gas.

4. All of the mattters set forth in Paragraphs 1 to 5, inclusive, of the Supplemental Petition attached to said motion, have been fully adjudicated by this Court in this cause, and have been finally determined adversely to the contention of said petitioner, by the decree entered herein on September 3, 1942, which decree is a verity as to said petitioner [fol. 194] and the petitioner is bound thereby, and cannot now be heard to question the authority and jurisdiction of this Court to deal with said fund as provided in said decree and in the order entered by the Court herein on February 14, 1944.

5. This respondent denies that it is without statutory power or authority to represent in these proceedings the ultimate consumers of gas purchased by said petitioner from the Natural Gas Pipeline Company of America during the refund period, and avers that it has full power and authority to deal with said funds in behalf of said consumers, and that such authority is coextensive with its authority to act for and represent such consumers in the determi-

nation of schedules of rates to be paid by them as the customers of the gas utility operating under a franchise granted by said City. This respondent expressly disclaims any title or interest in said fund except so much thereof as may be necessary to pay the cost of making distribution to said consumers and for its actual outlays in appearing for said consumers in said proceeding, and that if any of the ultimate consumers who would be entitled to a refund under the decree of this Court do not make a claim therefor by reason of death, removal or otherwise, this respondent is ready and willing to deliver any sums which would be due to such consumers, to said Central States Electric Company, as assignor of Iowa Electric Company, the actual operating gas utility in the City of Muscatine. This respondent denies, however, that said Central States Electric Company is entitled to any part of the sum to be paid to the Treasurer of the City of Muscatine under the order of this Court entered herein on February 14, 1944, by reason of any claimed leakage from petitioner's gas mains, for the reason that said leakage has been fully discounted in the rates charged to the sonsumers of gas in the City of Muscatine during the refund period, and the same should not be taken into account in any distribution of said fund.

[fol. 195] 6. This respondent avers that the fund of $25,708.54 which said petitioner is seeking to have paid to it instead of being distributed to the ultimate consumers arose out of the same circumstances and is of the same character as all other funds included in the sum of $6,377,913.52 ordered to be distributed under the terms of the decree entered herein on September 3, 1942, and for the reasons herein above stated, said petitioner is now estopped to assert or claim that the same are distinguishable from any other item covered by said decree, as claimed in Paragraph 7 of its supplemental petition.

7. This respondent further states that the allegations contained in Paragraph 8 of said supplemental petition are, in substance, a repetition of the matters urged by said petitioner in its original petition of intervention, all of which have been heretofore controverted and denied by this respondent, and respondent now expressly renews its denial of said allegations without restating them in detail.

This respondent respectfully submits to the Court that none of the matters alleged in said Supplemental Petition attached to petitioner's motion, furnish a proper or adequate ground for the granting of said motion; that all of said matters have been fully and finally adjudicated by this Court by orders and decrees heretofore entered in this proceeding, and which are binding and conclusive upon said petitioner, and this respondent, therefore, prays that said motion be denied as to both grounds thereof.

City of Muscatine, Iowa, by Matthew Westrate, City Attorney, 614-615 Laurel Building, Muscatine, Iowa.

[fol. 196] [File endorsement omitted.]

[fols. 197-198] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

No. 7454

AFFIDAVIT OF SERVICE—Filed March 17, 1944

STATE OF IOWA,
Muscatine County, ss:

I, Matthew Westrate, being first duly sworn on oath state that I am City attorney of the City of Muscatine, Iowa, Respondent to the Petition of Intervention heretofore filed in the above cause be Central States Electric Company, and to the Motion filed by said Petitioner for leave to file Supplemental Petition and for Stay of a certain order entered on February 14, 1944; that on the 16th day of March, 1944, I mailed a copy of the Resistance of the City of Muscatine, Iowa, to said Motion of the Central States Electric Company for leave to file Supplemental Petition and for Stay of Order Entered February 14, 1944, by registered mail to Mr. Dayton Ogden, one of the attorneys of record for Central States Electric Company, in care of Chapman

& Culter, at 111 West Monroe Street, in the City of Chicago, Illinois.

(Signed) Matthew Westrate.

Subscribed and sworn to before me by the said Matthew Westrate this 16th day of March, 1944. (Signed) Mary Prosser, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 199] In United States Circuit Court of Appeals

No. 7454

Natural Gas Pipeline Company of America and Texoma Natural Gas Company, Petitioners,

vs.

Federal Power Commission and Illinois Power Commission, Respondents

Resistance to Supplemental Petition of Central States Electric Company—Filed March 20, 1944

Comes now, Elmer E. Johnson, and for himself as a user of the natural gas involved in the above cause of action, and as mayor of the Town of Greenfield, Iowa, and for and on behalf of said Town of Greenfield, and Resists the Supplemental Petition of the above petitioners filed in the above Cause of Action on or about the 13th day of March, 1944. That he answers each item as numbered:

1. and 2. That this respondent or resistant knows not of the bond about which petitioner speaks, and it may have been filed and approved as stated and for the psurposes therein stated, but the fact remains that this rebate is not the property of the above petitioner, but is the property of the u-timate users; as to distribution of this rebate, this resistant can conceive that petitioner might be the proper person or agency to distribute this money to the ultimate users, but before permitted to do so, should be put under bonds to so do, and should do so under the orders of the

court and, *and* make reports from time to time as to its progress and a final report as to the final distribution, and that any undistributed portion should be paid then as finally ordered by the Court.

3. As to paragraph three, your resistant specifically denies that petitioner is the only party interested in said funds, for said fund now consists of money that has been wrongfully collected from the consuming public, and if it does not belong to them, then it belongs back at the beginning to the company or concern who first took the gas out of the ground, and apparently they are making no claim for it.

4. That as to the allegations of this paragraph of their petition, your resistant knows not, and therefore he denies that the meaning of the Natural gas act is as interpreted by petitioner.

[fol. 200] 5. Your resistant, denies that the interpretation of petitioner of this part of the Natural Gas Act is the correct one.

6. It would seem that there might be some ground to this contention of petitioners, but it would seem that city treasurers could give a bond to distribute this money, the same as any one else, and do all things as ordered by the Court. Probably the Town could do this as well, as impartially, and at as little expense as any one else, and if there should be any windfall, as petitioner speaks of, it would seem that no one would be more entitled to hold this money in trust for the ultimate user than the town, for claim could always be made for it. If this be done, the town should have some allowance for the expense of distribution. As to windfalls, it would appear that the town would have as much right as the petitioner or more so, for this payment would sure be a windfall to them, and in case of payment to them, the ultimate consumers would never receive any of the payments due them; but if payment were made to the town, to be distributed as ordered by the Court, the great majority of the ultimate users would receive their pay.-rebate.

All the above to apply, provided petitioner will not take the money, post bond and make distribution as ordered by the Court.

7. That the sum of $25,708.54, or the Central States Electric Company fund, may be a fund apart from the other funds previously dealt with by the Court, but if so, there is no reason why same should not be dealt with the same as the others.

8. That your resistant denies the contents of this paragraph, for the reasons heretofore urged in his original resistance, for the reason that this company bought this gas at a price that they thought they could make a profit out of the sale of, and because they did not make as big a profit as they anticipated gives them no more right to this money, than it gives them the right to collect the loss from the original or ultimate users by sending them a separate bill for the part each used and the loss the company suffered from each said ultimate users.

Wherefore, your resistant, Johnson, for himself and for the town of Greenfield, Adair County, Iowa, ask that said petitioners substituted or supplemental petition be dismissed at their costs, and that said $25,708.54 be distributed to the ultimate users of said gas.

Town of Greenfield, Iowa. By Elmer E. Johnson, Mayor. Elmer E. Johnson, pro se, Greenfield, Iowa.

[fol. 201] In United States Circuit Court of Appeals

[Title omitted]

No. 7454

Natural Gas Pipeline Company of America, et al., Petitioners,

vs.

Federal Power Commission, et al., Respondents

Order Granting Leave to File Supplemental Petition and Denying Same—March 28, 1944

It is ordered that the motion of Central States Electric Company for leave to file its supplemental petition be, and it is hereby, granted.

It is further ordered that the Supplemental Petition of Central States Electric Company be, and it is hereby, denied.

[fol. 202] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

PETITION OF CENTRAL STATES ELECTRIC COMPANY, INTERVENOR HEREIN, FOR AN ORDER STAYING THE EXECUTION AND ENFORCEMENT OF THE ORDERS OR DECREES OF THIS COURT ENTERED ON FEBRUARY 14, 1944, ON THE ORIGINAL PETITION FOR INTERVENTION OF CENTRAL STATES ELECTRIC COMPANY AND THE ORDER OF DECREE OF THIS COURT ENTERED ON MARCH 28, 1944, ON THE SUPPLEMENTAL PETITION OF CENTRAL STATES ELECTRIC COMPANY FOR THE PURPOSE OF ENABLING CENTRAL STATES ELECTRIC COMPANY TO APPLY FOR AND OBTAIN A WRIT OF CERTIORARI FROM THE SUPREME COURT—Filed March 29, 1944

To the Honorable Evan A. Evans, William M. Sparks and Otto Kerner, Judges of the Circuit Court of Appeals for the Seventh Circuit of the United States:

Your petitioner, *Central States Electric Company*, a corporation, respectfully presents this its application for an order staying the execution and enforcement of the orders or decrees of this Court rendered in the above cause on the 14th day of February, 1944, denying the prayer of the original petition for intervention of Central States Electric Company and directing payment by the Clerk of this Court of the sum of $20,823 to the City Treasurer of the City of Muscatine, Iowa, the sum of $1,221 to the City Treasurer of the City of Greenfield, Iowa, the sum of $2,260 to the City Treasurer of the City of Knoxville, Iowa, and the sum of $1,403 to the City of Pella, Iowa, and staying the execution and enforcement of the order or decree of this Court rendered in the above cause on March 28, 1944, denying the prayer of the supplemental petition of Central [fol. 203] States Electric Company, which application is made pursuant to the provisions of Section 350 of Title 28 of the United States Code to enable your petitioner to apply

for and obtain a writ of certiorari from the Supreme Court of the United States.

The grounds upon which said petition for certiorari will be based are as follows:

1. The rates paid to your petitioner by the ultimate consumers of natural gas purchased by them from your petitioner during the so-called refund period were insufficient to provide a fair return on the investment of your petitioner.

2. The condition of the orders of this Court and of the bond under which the sum of $25,708.54 was paid to the Clerk of this Court by Natural Gas Pipeline Company of America and Texoma Natural Gas Company is to the effect that said sum should be refunded to those who purchased natural gas from Natural Gas Pipeline Company of America and Texoma Natural Gas Company at wholesale, which includes your petitioner.

3. The said sum of $25,708.54 represents moneys paid by your petitioner to Natural Gas Pipeline Company of America in excess of the rates fixed by the Federal Power Commission in its order dated July 23, 1940, and which were refunded by Natural Gas Pipeline Company of America and Texoma Natural Gas Company according to the condition of said orders and said bond for the use and benefit of your petitioner.

4. Your petitioner is the only party in interest in said sum of $25,708.54 who is in privity with Natural Gas Pipeline Company of America under the scheduled rates which gave rise to such fund.

5. A refund of said sum of $25,708.54 to the ultimate consumers of the natural gas purchased by your petitioner from Natural Gas Pipeline Company of America during the refund period, or to the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, as the so-called representatives of such consumers, would in fact result in a reduction of rates during said period between such consumers and your petitioner, and the reduction of such rates is a matter beyond the jurisdiction of this Court.

6. The Natural Gas Act expressly requires refunds made by natural gas companies on account of excessive

rates to be made to the distributors who paid such rates to the natural gas companies.

7. The Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, are without statutory power or authority to represent in these proceedings the ultimate consumers of gas purchased by your petitioner from Nat- [fol. 204] ural Gas Pipeline Company of America during the refund period or to receive payment of said sum of $25,708.54 or to administer or distribute said sum in any manner whatsoever.

8. Your petitioner is not bound by the earlier decisions of this Court directing that refunds be made to the ultimate consumers, for the reason that such decisions were rendered on the basis of a disclaimer of interest by the distributors in the refund so made and for the further reason that your petitioner was not then a party to these proceedings.

9. The decision of this Court directing that said sum of $25,708.54 be paid to the respective municipal representatives of the ultimate consumers of the gas involved is based on the conclusion that the excessive rates paid by your petitioner to Natural Gas Pipeline Company of America during the refund period are reflected in the rates paid by the ultimate consumers to your petitioner. There is no evidence before this Court upon which it could properly base any such conclusion.

10. Since your petitioner did not receive a fair return on its investment during the refund period, as evidenced by its original petition for intervention herein, it is equitably entitled to said sum of $25,708.54.

11. This Court erred in faling to enter an order or decree herein directing that said sum of $25,708.54 be paid to your petitioner.

The reason why a stay is deemed necessary is that payment of said sum of $25,708.54 to the City Treasurers of the Cities of Muscatine, Greenfield, Knoxville and Pella, Iowa, as provided in the order of this Court entered on February 14, 1944, would defeat the purposes of a writ of certiorari to the Supreme Court, and if such writ were granted and

the decision of this Court reversed by the Supreme Court would render such reversal meaningless so far as your petitioner is concerned.

Dated March 29, 1944.

Perry M. Chadwick, Dayton Ogden, Attorneys for Central States Electric Company, Petitioner.

[fol. 205] I hereby certify that it is the bona fide intention of Central States Electric Company to make application to the Supreme Court of the United States for a writ of certiorari within the time limit prescribed by the Statutes in such case made and provided, and that I believe there is merit in its case and that the aforesaid orders or decrees of the Circuit Court of Appeals ought to be reversed by the Supreme Court of the United States.

Dayton Ogden.

[fol. 206] [File endorsement omitted.]

[fol. 207] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

AFFIDAVIT OF SERVICE—Filed March 29, 1944

ROSCOE C. NASH, being first duly sworn, on oath deposes and says that he served a copy of the Petition of Central States Electric Company for an Order staying the execution and enforcement of the Orders or decrees of this Court entered in the above cause on February 14, 1944, and March 28, 1944, respectively, for the purpose of enabling Central States Electric Company to apply for a Petition and Writ of Certiorari from the Supreme Court of the United States on the persons named as follows:

Mr. George Staff
Federal Power Commission
Washington, D. C.

Mr. Albert E. Hallett
Illinois Commerce Commission
208 South La Salle Street
Chicago, Illinois

Poppenhusen, Johnston, Thompson & Raymond
11 South La Salle Street
Chicago, Illinois

Daily, Dines, White and Fiedler
122 South Michigan Avenue
Chicago, Illinois

Sidley, McPherson, Austin & Burgess
11 South La Salle Street
Chicago, Illinois

[fol. 208] Isham, Lincoln & Beale
72 W. Adams Street
Chicago, Illinois

Alschuler, Putman, Johnson & Ruddy
32 Water Street
Aurora, Illinois

Mathew Westrate, Attorney at Law
Muscatine, Iowa

City Treasurer
Muscatine, Iowa

City Treasurer
Greenfield, Iowa

City Treasurer
Knoxville, Iowa

City Treasurer
Pella, Iowa

by enclosing the same in properly stamped envelopes addressed to the persons named above at their respective addresses, which envelopes were deposited in the United States mail box at 111 West Monroe Street, Chicago, Illinois, before the hour of five o'clock P. M. on March 29, 1944.

(S.) Roscoe C. Nash.

Subscribed and sworn to before me this 29th day of March, 1944. (S.) Edward F. Brubaker, Notary Public. My commission expires October 11, 1947. (Seal.)

[File endorsement omitted.]

[fol. 209] IN UNITED STATES CIRCUIT COURT OF APPEALS

7454

NATURAL GAS PIPELINE COMPANY OF AMERICA, et al.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION, et al., Respondents

STAY ORDER—March 31, 1944

On motion of counsel for Central States Electric Company, it is ordered that the enforcement of the orders of this Court herein of February 14, 1944 and March 28, 1944 be stayed for a period of thirty days from this date.

[fol. 210] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

NATURAL GAS PIPELINE COMPANY OF AMERICA and TEXOMA NATURAL GAS COMPANY, Petitioners,

vs.

FEDERAL POWER COMMISSION and ILLINOIS POWER COMMISSION, Respondents

DESIGNATION OF RECORD FOR CERTIORARI—Filed April 11, 1944

To the Clerk of the Aforesaid Court:

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above entitled cause, including therein the following:

Item No.	Date of Filing of Document or Entry of Order Described	Description of Document or Order
1	7/23/40	Order of Federal Power Commission entered 7/23/40, Docket No. G-109 and G-112, as amended by order of said Commission entered on 8/8/40.
2	9/14/40	Petition of Natural Gas Pipeline Company of America and Texoma Natural Gas Company for review of interim rate order of Federal Power Commission entered 7/23/40.
3	9/14/40	Appearance of Illinois Commerce Commission.
4	9/18/40	Appearance of Federal Power Commission.

Item No.	Date of Filing of Document or Entry of Order Described	Description of Document or Order
5	11/1/40	Order staying order of Federal Power Commission.
6	11/26/40	Order denying motion to reinstate bond filed in Cause No. 7439 and directing petitioners to file bond without surety in penal sum of $1,000,000.
[fol. 211]		
7	12/3/40	Bond filed pursuant to stay order of 11/26/40.
8	12/3/40	Order approving bond filed pursuant to stay order of 11/26/40.
9	8/30/40	Bond filed in Cause No. 7439.
10	8/30/40	Order entered in Cause No. 7439 staying order of Federal Power Commission.
11	11/1/40	Order entered in Cause No. 7439 staying order of Federal Power Commission.
12	11/26/40	Order entered in Cause No. 7439 denying motion to reinstate bond in Cause No. 7439 and directing petitioners to file bond without surety in penal sum of $1,000,000.
13	5/22/42	Opinion by Lindley J.
14	5/22/42	Order that counsel present form of judgment for approval.
15	6/13/42	Statement of United Gas Service Company re its interest in refund.
16	6/18/42	Statement of Natural Gas Pipeline Company of America re its interest in refund.
17	6/18/42	Statement of Texoma Natural Gas Company re its interest in refund.
18	6/18/42	Statement of Federal Power Commission re its interest in refund.
19	6/18/42	Statement of The Peoples Gas Light and Coke Company re its interest in refund.
20	6/18/42	Statement of Illinois Commerce Commission re its interest in refund.
21	6/24/42	Order retaining jurisdiction of refund.
22	6/24/42	Order appointing Tappan Gregory as agent to supervise refunds.
23	6/26/42	Order re interest and costs.
24	6/26/42	Memorandum opinion on interest and costs.
[fol. 212]		
25	6/30/42	Statement of Central States Electric Company re its interest in refund.
26	6/30/42	Memorandum opinion re methods of making refunds.
27	7/1/42	Order designating banks and amounts to be deposited in re refund.
28	7/2/42	Statement of Iowa-Illinois Electric Company re its interest in refund.
29	7/3/42	Statement of Iowa-Nebraska Light and Power Company re its interest in refund.
30	9/3/42	Decree re distribution of refunds.
31	9/22/42	Order re extension of time to show cause.
32	11/19/42	Order modifying paragraph 4 on page 7 of the decree entered 9/3/42.
33	11/24/42	Order separating interest of Central States Electric Company in the refund for separate disposal.
34	12/15/42	Supplemental decree.
35	1/22/43	Order of distribution.
36	6/7/43	Stipulation of City of Nebraska, et al. re settlement of their claims in the refund.
37	6/7/43	Order entered pursuant to preceding stipulation.
38	9/1/43	Motion of Central States Electric Company to intervene.
39	9/1/43	Petition of Central States Electric Company to intervene.
40	9/1/43	Order granting leave to Central States Electric Company to file its petition and to intervene.

Item No.	Date of Filing of Document or Entry of Order Described	Description of Document or Order
41	11/6/43	Order to give notice re application to intervene by Central States Electric Company.
42	12/1/43	Resistance of City of Muscatine to intervention of Central States Electric Company.
43	12/1/43	Affidavit of service.
44	12/1/43	Resistance of City of Greenfield to intervention of Central States Electric Company.
[fol. 213]		
45	12/7/43	Affidavit of service.
46	12/7/43	Affidavit of Journal Printing Company.
47	12/7/43	Affidavit of Adair County Press.
48	2/3/44	Hearing on intervention of Central States Electric Company taken under advisement.
49	2/14/44	Amendment to resistance of City of Muscatine to intervention of Central States Electric Company.
50	2/14/44	Affidavit of service.
51	2/14/44	Order denying Central States Electric Company's petition for intervention.
52	2/14/44	Order directing payment of Central States Electric Company fund to City Treasurers.
53	2/18/44	Letter from Chapman and Cutler to Clerk declining to consent to payment of Central States Electric Company Fund to City Treasurers.
54	3/11/44	Motion of Central States Electric Company for leave to file supplemental petition.
55	3/11/44	Supplemental petition of Central States Electric Company.
56	3/11/44	Affidavit of service.
57	3/17/44	Resistance of City of Muscatine to motion of Central States Electric Company to file supplemental petition.
58	3/17/44	Affidavit of service.
59	3/20/44	Resistance of Elmer Johnson pro se and as Mayor of the City of Greenfield to supplemental petition of Central States Electric Company.
60	3/23/44	Order granting leave to Central States Electric Company to file its supplemental petition and denial thereof.
61	3/29/44	Petition of Central States Electric Company to stay execution of orders of February 14, 1944, and March 28, 1944.
[fol. 214]		
62	3/29/44	Affidavit of service.
63	3/31/44	Order staying execution of orders of February 14 and March 28, 1944, for 30 days.
64		This designation.
65		Affidavit of service of this designation.
66		Clerk's certificate.

Perry M. Chadwick, Dayton Ogden, Attorneys for Central States Electric Company.

[fol. 215] [File endorsement omitted]

[fol. 216] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 7454

AFFIDAVIT OF SERVICE—Filed April 11, 1944

ROSCOE C. NASH, Being first duly sworn, on oath deposes and says that he served a copy of the designation of the

record on application of Central States Electric Company to the Supreme Court of the United States for certiorari on the persons named as follows:

Mr. George Staff, Federal Power Commission, Washington, D. C.;

Mr. Albert E. Hallett, Illinois Commerce Commission, 208 South La Salle Street, Chicago, Illinois;

Poppenhusen, Johnston, Thompson & Raymond, 11 South La Salle Street, Chicago, Illinois;

Daily, Kines White and Fiedler, 122 South Michigan Avenue, Chicago, Illinois;

Sidley, McPherson, Austin & Burgess, 11 South La Salle Street, Chicago, Illinois;

Isham, Lincoln & Beale, 72 West Adams Street, Chicago, Illinois;

Alschuler, Putnam, Johnson & Ruddy, 32 Water Street, Aurora, Illinois;

Mathew Westrate, Aty. at Law, Muscatine, Iowa;

[fol. 217] City Treasurer, Muscatine, Iowa;

City Treasurer, Greenfield, Iowa;

City Treasurer, Knoxville, Iowa;

City Treasurer, Pella, Iowa;

by enclosing the same in properly stamped envelopes addressed to the persons named above at their respective addresses, which envelopes were deposited in the United States mail box at 111 West Monroe Street, Chicago, Illinois, before the hour of three o'clock P. M. on April 11, 1944.

(Signed) Roscoe C. Nash.

Subscribed and sworn to before me this 11th day of April, 1944. (Signed) Edward F. Brubaker, Notary Public. My commission expires October 11, 1947. (Seal.)

[File endorsement omitted.]

[fol. 218] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 219] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 12, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.